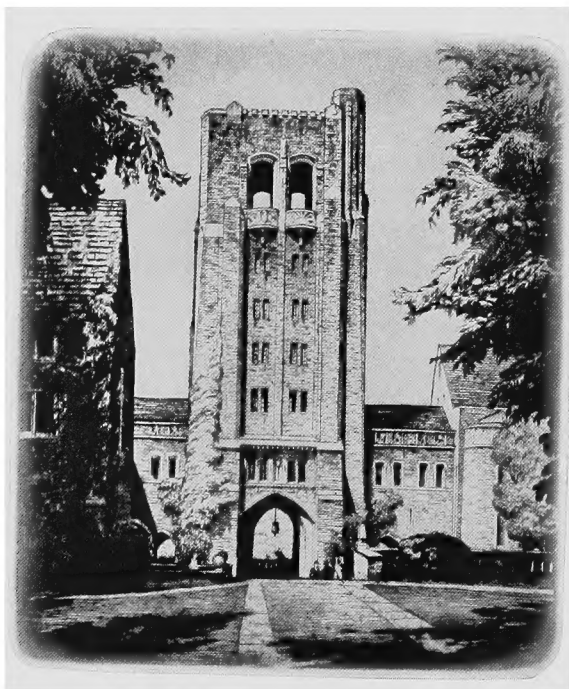


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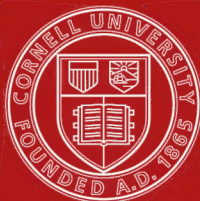
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GENERAL RULES

OF THE

SUPREME COURT OF THE UNITED STATES

AS

REVISED, CORRECTED AND ADOPTED

JANUARY 7TH, 1884;

ANNOTATED

AND WITH A

HISTORY OF EACH RULE FROM THE ORGANIZATION
OF THE COURT.

ALSO

THE RULES OF PRACTICE ADOPTED BY THE SUPREME COURT FOR THE CIRCUIT
AND DISTRICT COURTS OF THE UNITED STATES IN EQUITY AND ADMIRALTY
CASES, ORDERS OF THE SUPREME COURT IN REFERENCE TO APPEALS
FROM THE COURT OF CLAIMS, THE RULES OF THE COURT OF
CLAIMS, THE RULES OF THE SUPREME COURT OF THE DISTRICT
OF COLUMBIA, THE RULES OF PRACTICE IN ALL THE
CIRCUIT AND DISTRICT COURTS IN THE SECOND CIR-
CUIT, AND TABLES OF STATISTICS RESPECTING
THE JUDGES, CLERKS, TERRITORIAL JURIS-
DICTION, TERMS OF COURT, ETC., OF
ALL THE FEDERAL COURTS IN THE
UNITED STATES.

EDITED BY

SAMUEL A. BLATCHFORD

OF THE NEW YORK BAR

NEW YORK AND ALBANY

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PREFACE.

IT was my expectation when, at the request of Messrs. Banks & Brothers, I undertook to edit this volume, that my labors would be confined to the task of annotating and preparing for publication the General Rules of the Supreme Court of the United States, and that in this task I would be assisted by MR. GHERARDI DAVIS, of the New York Bar. To MR. DAVIS I am indebted for much valuable aid in the preparation for the annotations, but, to my extreme regret, his engagements were such that he was compelled to relinquish, early in the work, his share of the task, and the completion of the work has, therefore, fallen upon me alone.

For this reason the publication of this volume has been considerably delayed, and also because it was deemed well to include herein, without annotation, the Rules, other than the General Rules of the Supreme Court of the United States, which now appear herein, as likely to be useful to the profession, when collected together in one volume. It has also been deemed useful to add Tables of Statistics, respecting the Judges, the Clerks, the Territorial Jurisdiction of the Courts, and the Terms of Courts, etc., of the various Courts whose Rules are included in this volume, and of all the Circuit, District, and Territorial Courts of the United States. I have endeavored to be as accurate as possible in these Statistics, but as changes are frequently made in the Judges, Clerks, and Terms of Courts, some errors may have crept in. I can only ask the kind indulgence of the legal profession for such errors as may be discovered, and will deem it a kindness if the errors are pointed out to me.

In annotating the General Rules of the Supreme Court of the United States, I have endeavored to cite all the leading authorities of that Court relating thereto, from the time of the

adoption of the first four Original General Rules, given in 2 Dallas, 399, at February Term, 1790, when the Court first met at New York, the then seat of the Federal Government, to the present time. I have deemed it best to cite such cases only as appear in the recognized official Reports, viz.: in Dallas, Cranch, Wheaton, Peters, Howard, Black, Wallace, and the United States Reports. I have included all the cases relating to the General Rules, which appeared in the pamphlet numbers of 111 U. S. Reports, but those cases which were in Part 5 of that volume appeared too late for insertion under the Rules, and are, therefore, merely referred to, and their proper places pointed out, in the MEMORANDUM OF ADDITIONS AND CORRECTIONS inserted in the front of the volume.

Under the History of each Clause of every Rule, the Original General Rules are referred to by the paging in the original editions of the various volumes of Reports in which they occur. This paging coincides with the paging in Banks & Brothers' reprint of those Reports, except in reference to the paging in 1 Howard. In Banks & Brothers' reprint of that volume, the General Rules of the Supreme Court of the United States which were printed in the edition published at Philadelphia, by T. & J. W. Johnson, in 1843, were not reprinted, and the references made in this volume to Rules in 1 Howard, are to the edition of 1843 above referred to.

In regard to the General Rules of the Supreme Court of the United States, it may be of interest to state, that before any revision of those Rules was made by that Court, the Rules as adopted from time to time were published in the various official Reports from 1 Dallas to 20 Howard inclusive. In 1 Cranch and 1 Peters the loose individual Original General Rules, as adopted from time to time, up to the time of the publication of each volume of those Reports, were collected by the Reporter and printed. So, too, in 1 Howard the loose individual Original General Rules, 49 in all, as adopted at different times from 1790 to 1843, are collected by the Reporter in a body and printed. No revision of the General Rules was ever made by the Supreme Court till December Term, 1858, when all the Rules were revised in a body forming 29 Rules, and, as revised, are printed in 21 Howard. After this revision the va-

rious volumes of the Reports contain new General Rules, adopted from time to time, and amendments to the General Rules as last revised, but no further revision of the General Rules was made by the Supreme Court until May 1st, 1881, when the General Rules were again revised, and a new body of Rules, 29 in number, was adopted. These Rules are in the minutes of the Court, but are not printed in full, as a body, in any volume of the Reports. I have been enabled, through the kindness of MR. JAMES H. McKENNEY, Clerk of the Supreme Court, to make use of a printed copy of the General Rules of this Revision, which was in use by him as Clerk, in preparing references to this Revision under the History of each Clause of the General Rules. Since this Revision of May 1st, 1881, various new Rules and amendments have been promulgated, and will be found in the various volumes of Reports prior to 108 U. S., but there has been no other Revision until the present one of January 7th, 1884, when a new body of General Rules, 33 in number, was adopted, which are printed in 108 U. S.

If this volume, in its contents and arrangement, shall be deemed in any degree useful by the legal profession, I shall feel that my time and labor have not been bestowed in vain.

SAMUEL A. BLATCHFORD.

NEW YORK, *July*, 1884.

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MEMORANDUM OF ADDITIONS AND CORRECTIONS.

ADDITIONS TO THE GENERAL RULES OF THE SUPREME COURT OF THE UNITED STATES.

The following authorities in Part 5 of 111 U. S. Reports appeared too late for insertion at length under the appropriate Clauses of the Rules to which they refer, and are, therefore, here cited by title merely, under the Rule and Clause to which each properly refers.

RULE 9, CLAUSE 1.—At end of authorities on page 96, see, also, Killian, administrator, *v. Clark*, 111 U. S. 784 (May 5, 1884).

RULE 24, CLAUSE 5.—At end of authorities on page 191, see, also, Killian *v. Ebbinghaus*, 111 U. S. 798 (May 5, 1884).

CHANGES IN THE JUDGES OF THE DISTRICT AND TERRITORIAL COURTS SINCE THE TABLES OF STATISTICS BEGINNING AT PAGE 861 WERE PREPARED, AND WHICH CANNOT BE COR- RECTED THEREIN.

DISTRICT OF RHODE ISLAND. DISTRICT COURT.—The Honorable LE BARON B. COLT, District Judge (see page 870), has been appointed Judge of the Circuit Court of the United States for the First Judicial Circuit. He has not as yet resigned as District Judge, and his successor as District Judge has not yet been appointed. His name is, therefore, still retained as District Judge.

ALASKA.—By Act of Congress of May 17, 1884, ch. 36, entitled “An Act to provide a civil government for Alaska,” the Territory of Alaska was organized as constituting a Civil and Judicial District, and a District Court was established for said District, and provision was made for the appointment of a District Judge for said District, and that at least two terms of the Court shall be held in the District in each year, one at Sitka, beginning on the first Monday in May, and the other at Wrangel, beginning on the first Monday in November, and such special sessions as may be necessary for the despatch of business. Provision was made for the appointment of a Clerk, District Attorney, Marshal, etc., with offices of the Clerk at Sitka and Wrangel, and of the Marshal at Sitka, Wrangel, Oonalashka and Juneau City.

Under this Act the following appointments have been made:

WARD MCALLISTER, JR., of California, to be United States Judge for the District of Alaska.

E. W. HASKELL, to be United States Attorney for the District of Alaska.

ANDREW T. LEWIS, of Illinois, to be Clerk of the United States Court for the District of Alaska.

M. C. HILLYER, of California, to be Marshal of the United States Court for the District of Alaska. *

DAKOTA.—The following appointments of additional Associate Justices of the Supreme Court of the Territory of Dakota have been made, under the Act of Congress of July 4, 1884, ch. 86:

WILLIAM H. FRANCIS, of New Jersey.

SEWARD SMITH, of Iowa.

For the other Associate Justices of Dakota, see p. 912.

WASHINGTON.—George Turner, of Alabama, has been appointed an additional Associate Justice of the Supreme Court of the Territory of Washington, under the Act of Congress of July 4, 1884, ch. 86.

For the other Associate Justices of Washington, see p. 914.

GENERAL RULES
OF THE
SUPREME COURT OF THE UNITED STATES,
ADOPTED JANUARY 7th, 1884.
ANNOTATED,
AND
WITH A HISTORY OF EACH RULE.

Rule 1.

CLERK.

1. The clerk of this court shall reside and keep the office at the seat of the National Government, and he shall not practise, either as attorney or counsellor, in this court, or in any other court, while he shall continue to be clerk of this court.

HISTORY.

This Clause is, with some alterations, Original General Rule 1, adopted February 3d, 1790, 1 Cranch, xvi., and 1 How. xxiii. This Original General Rule, after appointing a clerk by name, was in these words, viz.:

“That he reside and keep his office at the seat of the national government, and that he do not practise, either as an attorney or a counsellor, in this court, while he shall continue to be clerk of the same.”

Original General Rule 1 will be found in 1 Wheat. xiii. and 1 Pet. v., in the same words as last above quoted, except that the words “the clerk of this court do” are substituted for the word “he” in the first line thereof.

In the Revisions of December Term, 1858, 21 How. v., and of May 1st, 1871, this Clause appears as the first Clause of General Rule 1, which is in the same language as is used in Clause 1 of the present General Rule 1, with the exception of some slight verbal alterations, and differs substantially from Original General Rule 1, only by the incorporation of the words "or any other court" after the words "in this court." For this Clause in the Revision of 1884, see 108 U. S. 573.

FEDERAL STATUTES.

"Sec. 677. The Supreme Court shall have power to appoint a clerk and a marshal for said court, and a reporter of its decisions."

Revised Statutes (Second Edition), § 677, p. 125; Act of Congress of 24th September, 1789, ch. 20, sec. 7, 1 Stat. at Large, 76.

"Sec. 678. One or more deputies of the clerk of the Supreme Court may be appointed by the court on the application of the clerk, and may be removed at the pleasure of the court. In case of the death of the clerk, his deputy or deputies shall, unless removed, continue in office and perform the duties of the clerk in his name until a clerk is appointed and qualified; and for the defaults or misfeasances in office of any such deputy, whether in the lifetime of the clerk or after his death, the clerk, and his estate, and the sureties in his official bond shall be liable; and his executor or administrator shall have such remedy for any such defaults or misfeasances committed after his death as the clerk would be entitled to if the same had occurred in his lifetime."

Revised Statutes (Second Edition), § 678, p. 125; Act of Congress of 8th June, 1872, ch. 336, 17 Stat. at Large, 330.

"Sec. 748. No clerk, assistant or deputy clerk, of any Territorial, District, or Circuit Court, or of the Court of Claims, or the Supreme Court of the United States, or marshal or deputy marshal of the United States within the district for which he is appointed, shall act as a solicitor, proctor, attorney, or counsel in any cause depending in either of said courts, or in any district for which he is acting as such officer."

Revised Statutes (Second Edition), § 748, p. 141; Act of Congress of 16th January, 1873, ch. 36, sec. 1, 17 Stat. at Large, 411.

"Sec. 749. Whosoever violates the preceding section shall be stricken from the roll of attorneys by the court upon complaint, upon which the respondent shall have due notice, and be heard in his defence; and in the case of a marshal or deputy marshal so acting, he shall be recommended by the court for dismissal from office."

Revised Statutes (Second Edition), § 749, p. 141; Act of Congress of 16th January, 1873, ch. 36, sec. 2, 17 Stat. at Large, 411.

“Sec. 794. The clerk of the Supreme Court, and every clerk and deputy clerk of a Circuit or District court, shall, before he enters upon the execution of his office, take an oath or affirmation in the following form: ‘I, A. B., being appointed a clerk of ———, do solemnly swear (or affirm) that I will truly and faithfully enter and record all the orders, decrees, judgments, and proceedings of the said court, and that I will faithfully and impartially discharge and perform all the duties of my said office, according to the best of my abilities and understanding. So help me God.’ The words ‘so help me God’ shall be omitted in all cases where an affirmation is admitted instead of an oath.”

Revised Statutes (Second Edition), § 794, p. 149; Act of Congress of 24th September, 1789, ch. 20, sec. 7, 1 Stat. at Large, 76.

See also sections 1756 and 1757, Revised Statutes (Second Edition), pp. 312 and 313, for the forms of oath to be taken by every person elected or appointed to any office of honor or profit, either in the civil, military or naval service, excepting the President, and for the modified form of such oath to be taken by persons who cannot take the full form of oath on account of their participation in the late rebellion, and the Act of Congress of 2d July, 1862, ch. 128, 12 Stat. at Large, 502; Act of Congress of 11th July, 1868, ch. 139, 15 Stat. at Large, 85; Act of Congress of 15th February, 1871, ch. 53, 16 Stat. at Large, 412.

“Sec. 795. The clerk of every court shall give bond, in a sum to be fixed and with sureties to be approved by the court which appoints him, faithfully to discharge the duties of his office, and seasonably to record the decrees, judgments, and determinations of the court of which he is clerk; and a new bond may be required whenever the court deems it proper that such bond should be given. A copy of every bond given by a clerk shall be entered on the journal of the court for which he is appointed, and the bond shall be deposited for safe keeping as the court may direct. A certified copy of such entry shall be *prima facie* proof of the execution of such bond and of the contents thereof.”

Revised Statutes (Second Edition), § 795, p. 149; Act of Congress of 24th September, 1789, ch. 20, sec. 7, 1 Stat. at Large, 76; Act of Congress of 3d March, 1863, ch. 93, sec. 2, 12 Stat. at Large, 768.

“Sec. 3. That the clerks of the Supreme Court and the Circuit and District Courts, respectively, shall each, before he enters upon the execution of his office, give bond, with sufficient sureties, to be approved by the court for which he is appointed, to the United States, in the sum of not less than five, and not more than twenty thousand dollars, to be determined and regulated by the Attorney-General of the United States, faithfully to discharge the duties of his office, and seasonably to record the decrees, judgments, and determinations of the court of which he is clerk;

“And it shall be the duty of the District Attorneys of the United States, upon requirement by the Attorney-General, to give thirty days notice of motion in their several courts that new bonds, in accordance with the terms of this Act, are required to be executed; and upon failure of any clerk to execute such new bonds, his office shall be deemed vacant.

“The Attorney-General may at any time, upon like notice through the District Attorney, require a bond of increased amount, in his discretion, from any of said clerks within the limit of the amount above specified; and the failure of the clerk to execute the same shall in like manner vacate his office. All bonds given by the clerk, shall, after approval, be recorded in their respective offices, and copies thereof from the records, certified by the clerks respectively, under seal of court, shall be competent evidence in any court. The original bonds shall be filed in the Department of Justice.”

Act of Congress of 22d February, 1875, ch. 95, sec. 3, 18 Stat. at Large, 333.

For Statutes respecting the fees of the Clerk, see Clause 7, Rule 24.

For other provisions relating to Clerks generally, the supervision and presentation of their accounts, their failure to deposit moneys received, their embezzlement, &c., of moneys, records, vouchers, &c., and the punishment therefor of Clerks, &c., and which provisions of law are not especially applicable to this Rule, see Revised Statutes (Second Edition), §§ 368, 798, 5504 and 5505, pp. 62, 149, 1066 and 1067 respectively, and Act of Congress of 22d February, 1875, ch. 95, 18 Stat. at Large, 333; Act of Congress of 3d March, 1875, ch. 144, 18 Stat. at Large, 479.

2. The clerk shall not permit any original record or paper to be taken from the court room, or from the office, without an order from the court, except as provided by Rule 10.

HISTORY.

This Clause is, with some alterations, the successor of Original General Rule 12, adopted August 7th, 1797, which will be found in 3 Dallas, 377; 1 Cranch, xviii.; 1 Wheat. xv.; 1 Pet. vii., and 1 How. xxv., in these words, viz.:

“*It is ordered* by the court, that no record of the court be suffered by the clerk to be taken out of his office, but by the consent of the court; otherwise, [“he is”—these words in 3 Dallas, 377], “to be responsible for it.”

On February 19th, 1825, Original General Rule 12 appears to have been modified by the adoption of an Original General Rule numbered 34, as

given in 1 Pet. xi., and numbered 35, as given in 1 How. xxxii., which was in these words:

“*Ordered*, That after the present term, no original record shall be taken from the Supreme Court Room, or from the office of the clerk of this court.”

In the General Rules, as revised and corrected at the December Term, 1858, 21 How. v., and in the Revision of May 1st, 1871, Original General Rule 12, as modified by Original General Rule 35 of February 19th, 1825, appears as the second sub-division of General Rule 1, in the following words, viz.:

“The clerk shall not permit any original record or paper to be taken from the Supreme Court Room, or from the office, without an order from the court.”

On November 13th, 1882, this Clause was amended, 106 U. S. vii., by omitting the word “Supreme” and by adding at the end thereof the words “but records on appeals and writs of error, exclusive of original papers sent up therewith, may be taken to a printer to be printed, under the requirements of Rule 10.”

[For the opinion of the Supreme Court showing the circumstances which occasioned this amendment, see Clause 7 of Rule 24; also 108 U. S. 1.]

This Clause in the Revision of January 7th, 1884, differs from the same Clause in General Rule 1 of the Revision of May 1st, 1871, as amended November 13th, 1882, by omitting the words “but records on appeals and writs of error, exclusive of original papers sent up therewith, may be taken to a printer to be printed, under the requirements of” and by substituting in place thereof the words “except as provided by.”

For this Clause in the Revision of 1884, see 108 U. S. 573.

FEDERAL STATUTES.

“Sec. 679. The records and proceedings of the Court of Appeals, appointed previous to the adoption of the present Constitution, shall be kept in the office of the clerk of the Supreme Court, who shall give copies thereof to any person requiring and paying for them in the manner provided by law for giving copies of the records and proceedings of the Supreme Court; and such copies shall have like faith and credit with all other proceedings of said court.”

Revised Statutes (Second Edition), § 679, p. 125; Act of Congress of 8th May 1792, ch. 36, sec. 12; 1 Stat. at Large, 279.

Rule 2.

ATTORNEYS AND COUNSELLORS.

1. It shall be requisite to the admission of attorneys or counsellors to practise in this court, that they shall have been such for three years past in the Supreme Courts of the States to which they respectively belong, and that their private and professional character shall appear to be fair.

HISTORY.

This Clause is the same as the first paragraph of Original General Rule 2, adopted February 5th, 1790, 2 Dall. 399; and as Original General Rule 2, 1 Cranch, xvi.; 1 Wheat. xiii.; 1 Pet. vi., and 1 How. xxiii., with the exception of some immaterial verbal alterations.

Original General Rule 3, adopted February 5th, 1790; 1 Cranch, xvi.; 1 Wheat. xiii.; 1 Pet. vi., and 1 How. xxiii., provided that counsellors should not practise as attorneys, nor attorneys as counsellors in the Supreme Court; and in 2 Dallas, 399, this provision is contained in the second paragraph of Original General Rule 2.

Original General Rule 14, adopted August 12th, 1801; 1 Cranch, xviii., 1 Wheat. xvi.; 1 Pet. vii., and 1 How. xxv., provided that counsellors might be admitted as attorneys on taking the usual oath.

In the General Rules, as revised and corrected at December Term, 1858, 21 How. v., this Clause appears *totidem verbis* as the first Clause of General Rule 2, except that the word "and" was used between "attorneys" and "counsellors" instead of the word "or," as in the present revision, and is precisely the same as the first Clause of General Rule 2 of the Revision of May 1st, 1871. For this Clause in the Revision of 1884, see 108 U. S. 573.

FEDERAL STATUTES.

"Sec. 747. In all the courts of the United States the parties may plead and manage their own causes personally, or by the assistance of such counsel or attorneys at law as, by the rules of the said courts, respectively, are permitted to manage and conduct causes therein."

Revised Statutes (Second Edition), § 747, p. 141; Act of Congress of 24th September, 1789, ch. 20, sec. 35, 1 Stat. at Large, 92.

"Sec. 823. The following and no other compensation shall be taxed and allowed to attorneys, solicitors, and proctors in the courts of the United States, to district attorneys, clerks of the Circuit and Dis-

strict Courts, marshals, commissioners, witnesses, jurors, and printers in the several States and Territories, except in cases otherwise expressly provided by law. But nothing herein shall be construed to prohibit attorneys, solicitors, and proctors from charging to and receiving from their clients, other than the government, such reasonable compensation for their services, in addition to the taxable costs, as may be in accordance with general usage in their respective States, or may be agreed upon between the parties."

Revised Statutes (Second Edition), § 823, p. 154; Act of Congress of 26th February, 1853, ch. 80, sec. 1, 10 Stat. at Large, 161; Act of Congress of 23d June, 1874, ch. 469, sec. 7, 18 Stat. at Large, 256; Act of Congress of 26th June, 1876, ch. 147, sec. 4, 19 Stat. at Large, 62.

For amount of taxable fees of attorneys, solicitors and proctors and manner of taxing same, see §§ 824, 983, Revised Statutes (Second Edition), 154, 184.

"*Be it enacted, etc.*, That any woman who shall have been a member of the bar of the highest court of any State or Territory, or of the Supreme Court of the District of Columbia, for the space of three years, and shall have maintained a good standing before such court, and who shall be a person of good moral character, shall, on motion, and the production of such record, be admitted to practise before the Supreme Court of the United States."

Act of Congress of 15th February, 1879, ch. 81, 20 Stat. at Large, 292.

For other statutory provisions relating to attorneys, solicitors and counsellors generally and not cited in full, see Revised Statutes (Second Edition), §§ 189, 982, 3478, 3479, 4063, 4064, 4745, 4768, 4769, 4786, 4996, 5078, 5095, 5485, 5498; also, Act of Congress of 22d June, 1874, ch. 390, sec. 18, 18 Stat. at Large, 184; Act of Congress of 23d June, 1874, ch. 469, sec. 2 and 7, 18 Stat. at Large, 253; Act of Congress of 20th June, 1878, ch. 367, 20 Stat. at Large, 243.

AUTHORITIES.

1. A gentleman who had been admitted originally as an attorney of the Supreme Court was, on motion, transferred from the roll of attorneys and placed on the list of counsellors, and was qualified *de novo* as counsellor.

Ex parte Hallowell, 3 Dall. 410. (February Term, 1799.)

2. When an attorney's name has been stricken from the roll of counsellors of the District Court of a district, by order of the court, for contempt, the Supreme Court will not refuse his admission to practise before it, if he otherwise comes within the rule.

Ex parte Tillinghast, 4 Pet. 108. (January Term, 1830.)

3. In this case two applications were made by the State of Texas to the

Supreme Court, one to compel one George W. Paschal, an attorney and counsellor of the Supreme Court, to pay to the clerk of the court, for the benefit of the State of Texas, a certain sum of money, alleged to have been received by him under a decree in a case on the original docket of the Supreme Court. This application was denied, the Supreme Court holding that an attorney or solicitor has a lien for moneys collected for his fees and disbursements in a cause, and in any suit or proceeding brought to recover other moneys covered by the same retainer. The parties were accordingly left to their action. The second application was that the name of said Paschal be stricken from the docket as counsel for the complainant, and that he be forbidden to interfere with the case. This application was granted, the Supreme Court holding that it could not hesitate in permitting the State to appear and conduct its causes by such counsel as it should choose to represent it, leaving the respondent to such remedies, for the redress of any injury he might sustain, as might be within his power.

In re Paschal, 10 Wall. 483. (December Term, 1870.)

4. A case of interest to the profession, which, while it did not relate to an attorney or counsellor of the Supreme Court as such, lays down principles applicable to them. The power of removal of an attorney from the bar is possessed by all courts which have authority to admit attorneys to practise. It is a power which should only be exercised for the most weighty reasons, such as would render the continuance of the attorney in practise incompatible with a proper respect of the court for itself, or a proper regard for the integrity of the profession. And, except where matters occurring in open court, in presence of the judges, constitute the grounds of its action, the power of the court should never be exercised without notice to the offending party of the grounds of complaint against him, and affording him ample opportunity of explanation and defence. And even where the matters constituting the grounds of complaint have occurred in open court, under the personal observation of the judges, the attorney should ordinarily be heard before the order of removal is made, for those matters may not be inconsistent with the absence of improper motives on his part, or may be susceptible of such explanation as would mitigate their offensive character, or he may be ready to make all proper reparation and apology. A removal from the bar should never be decreed where any punishment less severe—such as reprimand, temporary suspension, or fine—would accomplish the end desired.

Bradley v. Fisher, 13 Wall. 335, (354). (December Term, 1871.)

5. A case of interest to the profession, which, while not directly applicable to the Rule, as it does not relate to an attorney or counsellor of the Supreme Court as such, discusses at length the rights and privileges of attorneys in the Federal courts and the powers of the courts to strike their names from the roll.

Ex parte Wall, 107 U. S. 265. (October Term, 1882.)

2. They shall respectively take and subscribe the following oath or affirmation, viz.:

I, ———, do solemnly swear [or affirm] that I will demean myself, as an attorney and counsellor of this court, uprightly, and according to law; and that I will support the Constitution of the United States.

HISTORY.

Original General Rule 3, adopted February 5th, 1790, 1 Cranch, xvi.; 1 Wheat. xiii.; 1 Pet. vi., and 1 How. xxiii., provided that counsellors should not practise as attorneys nor attorneys as counsellors in the Supreme Court, and in 2 Dall. 399, this provision is contained in Original General Rule 2. Original General Rule 4, adopted on the same day (given as Original General Rule 3, 2 Dall. 399), 1 Cranch, xvi.; 1 Wheat. xiii.; 1 Pet. vi., and 1 How. xxiii., was in substantially the same language as this Clause, except that it did not contain the words "and subscribe," the words "[or affirm]," and used the word "or" instead of "and" between the words "attorney" and "counsellor."

Original General Rule 6, adopted February 7th, 1791, 2 Dall. 400; 1 Cranch, xvii.; 1 Wheat. xiv.; 1 Pet. vi., and 1 How. xxiv., provided for an affirmation in proper cases, in place of an oath.

Original General Rule 14, adopted August 12th, 1801, 1 Cranch, xviii.; 1 Wheat. xvi.; 1 Pet. vii., and 1 How. xxv., provided that counsellors might be admitted as attorneys, on taking the usual oath.

The second subdivision of General Rule 2 of the General Rules, as revised and corrected at December Term, 1858, 21 How. v., and which entire General Rule 2 was a substitute for Original General Rules 2, 3, 4, 6 and 14, was, with an immaterial verbal change, and with the exception of the words "and subscribe," *totidem verbis* the same as this Clause.

On March 10th, 1865, the second clause of General Rule 2 was amended, 2 Wall. vii., by changing the form of the oath in accordance with the provisions of the Act of Congress of January 24th, 1865 (13 Stat. at Large, 424), and all persons who had theretofore been admitted as attorneys and counsellors of the Supreme Court were required to take the new oath or affirmation before the clerk of the Supreme Court, or of any Circuit or District Court of the United States, but this amendment was rescinded and annulled at the December Term, 1866, 4 Wall. vii., after the decision of the Court in *Ex parte Garland*, 4 Wall. 333, which declared the amendment of March 10th, 1865, to have been unadvisedly adopted, leaving the Clause as it existed after the Revision of December Term, 1858. This Clause is the same as the second Clause of General Rule 2 of the Revision of May 1st, 1871. For this Clause in the Revision of 1884, see 108 U. S. 573.

AUTHORITIES.

1. A case where the Supreme Court declared the amendment of March 10th, 1865, to the second Clause of the then General Rule 2 to have been unadvisedly adopted, and discussed at length the rights of an attorney and counsellor acquired by his admission to appear for suitors, and to argue cases, as not being a mere indulgence, revocable at the pleasure of the Court or at the command of the legislature, but as a right of which he could only be deprived by the judgment of the Court for moral or professional delinquency. Attorneys and counsellors are not officers of the United States, but officers of the Court; and the Act of Congress of January 24th, 1865, 13 Stat. at Large, 424, providing that after its date, no person should be admitted as an attorney and counsellor to the bar of the Supreme Court unless he should have first taken and subscribed the oath prescribed by the Act of Congress of July 2d, 1862, 12 Stat. at Large, 502, was declared unconstitutional.

Ex parte Garland, 4 Wall. 333. (December Term, 1866.)

[See this case referred to in the History of this Clause.]

Rule 3.**PRACTICE.**

This court considers the former practice of the courts of king's bench and of chancery, in England, as affording outlines for the practice of this court; and will, from time to time, make such alterations therein as circumstances may render necessary.

HISTORY.

This Rule is, with the exception of some immaterial verbal alterations, and with the addition of the word "former" before the word "practice" in the first line, the same as Original General Rule 7, adopted August 8th, 1791 (2 Dallas, 411, where the rule is said to have been announced in 1792); 1 Cranch, xvii.; 1 Wheat. xiv.; 1 Pet. vi., and 1 How. xxiv., and is precisely the same as General Rule 3 of the General Rules, as revised and corrected at December Term, 1858, 21 How. v., and of the Revision of May 1st, 1871, with the addition of the said word "former," as indicated. For this Rule in the Revision of 1884, see 108 U. S. 574.

THE CONSTITUTION.

"In all cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before men-

tioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions and under such Regulations as the Congress shall make." Article 3, section 2.

FEDERAL STATUTES.

"Sec. 687. The Supreme Court shall have exclusive jurisdiction of all controversies of a civil nature where a State is a party, except between a State and its citizens, or between a State and citizens of other States, or aliens, in which latter cases it shall have original, but not exclusive, jurisdiction. And it shall have exclusively all such jurisdiction of suits or proceedings against ambassadors, or other public ministers, or their domestics, or domestic servants, as a court of law can have consistently with the law of nations; and original, but not exclusive, jurisdiction of all suits brought by ambassadors, or other public ministers, or in which a consul or vice-consul is a party."

Revised Statutes (Second Edition), § 687, p. 127; Act of Congress of 24th September, 1789, ch. 20, sec. 13, 1 Stat. at Large, 80.

"Sec. 689. The trial of issues of fact in the Supreme Court, in all actions at law against citizens of the United States, shall be by jury."

Revised Statutes (Second Edition), § 689, p. 128; Act of Congress of 24th September, 1789, ch. 20, sec. 13, 1 Stat. at Large, 80.

AUTHORITIES.

1. In a case of original jurisdiction the Supreme Court determined to frame their proceedings according to those which had been adopted in the English Courts in analogous cases, and decided that the rules and practice of the Court of Chancery should govern in conducting the suit to a final issue.

State of Rhode Island v. State of Massachusetts, 12 Pet. 657, 755. (January Term, 1838.)

Same v. Same, 13 Pet. 23. (January Term, 1839.)

Same v. Same, 14 Pet. 210 (256). (January Term, 1840.)

Same v. Same, 15 Pet. 233. (January Term, 1841.)

2. In an application for a rehearing, the Supreme Court held that when sitting as an appellate tribunal it has not adopted the rules and practice of the English Court of Chancery in cases of equity, as the English Chancery is a court of original jurisdiction, while the Supreme Court sits as an appellate tribunal in certain cases; it would be impossible from the nature and office of the two tribunals, to adopt the same rules of practice in both.

Brown v. Aspden, 14 How. 25. (December Term, 1852.)

[See same case under Rule 30.]

3. In cases in which the Supreme Court has original jurisdiction, the

form of proceeding is not regulated by Act of Congress, but by the rules and orders of the court, which are framed in analogy to the practice of the English Court of Chancery, but the Supreme Court does not follow this practice, when it would embarrass the case by unnecessary technicality or defeat the purposes of justice.

State of Florida v. State of Georgia, 17 How. 478. (December Term, 1854.)

4. The Supreme Court has adopted no rules governing suits in cases of original jurisdiction, but states, that in cases of equity where the court has original jurisdiction, it has been the usual practice to hear a motion for leave to file the bill, and, leave having been given, subsequent proceedings have been regulated by orders made from time to time as occasion required; that the motion for leave is usually heard *ex parte* on the usual motion day, on part of the complainant only, except in an extraordinary case, such as where a State asks leave to file a bill against the President of the United States (*State of Mississippi v. Johnson*, 4 Wall. 475), when it was thought proper that argument should be heard against the motion for leave. Ten printed copies of the bill are required to be filed with the clerk before hearing. This practice to be regarded as that which will be adopted in all cases of original equity jurisdiction.

State of Georgia v. Grant, 6 Wall. 241. (December Term, 1867.)

ORIGINAL JURISDICTION.

CASES IN THE SUPREME COURT WHERE THE COURT EITHER EXERCISED,
OR HELD THAT IT COULD EXERCISE, OR REFUSED TO EXERCISE,
ORIGINAL JURISDICTION.

a. Where original jurisdiction was exercised, or where it was held that it could be exercised.

Vanstophorst v. State of Maryland, 2 Dallas, 401. (August Term, 1791.)

Oswald, Administrator v. State of New York, 2 Dallas, 401, 402, 415.

(February and August Terms, 1792 and February Term, 1793.)

State of Georgia v. Brailsford, 2 Dallas, 402. (August Term, 1792.)

Chisholm v. Georgia, 2 Dallas, 419. (February Term, 1793.)

Grayson v. Virginia, 3 Dallas, 320. (August Term, 1796.)

Huger v. South Carolina, 3 Dallas, 339. (February Term, 1797.)

State of New York v. State of Connecticut, 4 Dallas, 1, 3 and 6. (August Term, 1799.)

State of New Jersey v. State of New York, 3 Pet. 461. (January Term, 1830.)

State of New Jersey v. State of New York, 5 Pet. 284. (January Term, 1831.)

State of New Jersey v. State of New York, 6 Pet. 323. (January Term, 1832.)

Davis v. Packard, 7 Pet. 276. (January Term, 1833.)

State of Rhode Island v. State of Massachusetts, 7 Pet. 651. (January Term, 1833.)

State of Rhode Island v. State of Massachusetts, 11 Pet. 226. (January Term, 1837.)

Same v. Same, 12 Pet. 657, 755. (January Term, 1838.)

Same v. Same, 13 Pet. 23. (January Term, 1839.)

Same v. Same, 14 Pet. 210. (January Term, 1840.)

Same v. Same, 15 Pet. 233. (January Term, 1841.)

State of Pennsylvania v. The Wheeling & Belmont Bridge Company, 9 How. 647. (January Term, 1850.)

State of Florida v. State of Georgia, 11 How. 292. (December Term, 1850.)

State of Pennsylvania v. The Wheeling & Belmont Bridge Company, 11 How. 528. (December Term, 1850.)

State of Pennsylvania v. The Wheeling and Belmont Bridge Company, 13 How. 518. (December Term, 1851.)

State of Florida v. State of Georgia, 17 How. 478. (December Term, 1854.)

Commonwealth of Kentucky v. Dennison, Governor, 24 How. 66. (December Term, 1860.)

State of Georgia v. Grant, 6 Wall. 241. (December Term, 1867.)

Virginia v. West Virginia, 11 Wall. 39. (December Term, 1870.)

b. Where original jurisdiction was refused.

Hollingsworth v. Virginia, 3 Dallas, 378. (February Term, 1799.)

Fowler v. Lindsey, 3 Dallas, 411. (February Term, 1799.)

Marbury v. Madison, 1 Cranch, 137. (February Term, 1803.)

The Cherokee Nation v. The State of Georgia, 5 Pet. 1. (January Term, 1831.)

Ex parte Juan Madrazzo, 7 Pet. 627. (January Term, 1833.)

State of Mississippi v. Johnson, President, 4 Wall. 475. (December Term, 1866.)

State of Georgia v. Stanton, 6 Wall. 50. (December Term, 1867.)

Pennsylvania v. Quicksilver Company, 10 Wall. 553. (December Term, 1870.)

State of New Hampshire v. State of Louisiana and State of New York v. State of Louisiana, 108 U. S. 76. (March 5th, 1883.)

See *Cunningham v. Macon & Brunswick Railroad Company*, 109 U. S. 446. (December 3d, 1883.)

Rule 4.**BILL OF EXCEPTIONS.**

The judges of the Circuit and District Courts shall not allow any bill of exceptions which shall contain the charge of the court at large to the jury in trials at common law, upon any general exception to the whole of such charge. But the party excepting shall be required to state distinctly the several matters of law in such charge to which he excepts; and those matters of law, and those only, shall be inserted in the bill of exceptions and allowed by the court.

HISTORY.

With the exception of some immaterial verbal alterations this Rule does not differ from Original General Rule 38, adopted at January Term, 1832, 6 Pet. iv., and 1 How. xxxiv., nor from General Rule 4 of the Revisions of December Term, 1858, 21 How. vi., and of May 1st, 1871. For Rule 4 of the Revision of 1884, see 108 U. S. 574.

FEDERAL STATUTES.

“Sec. 648. The trial of issues of fact in the Circuit Courts shall be by jury, except in cases of equity and of admiralty and maritime jurisdiction, and except as otherwise provided in proceedings in bankruptcy, and by the next section.”

Revised Statutes (Second Edition), § 648, p. 118; Act of Congress of 24th September, 1789, ch. 20, sec. 12, 1 Stat. at Large, 79.

“Sec. 649. Issues of fact in civil cases in any Circuit Court may be tried and determined by the court, without the intervention of a jury, whenever the parties, or their attorneys of record, file with the clerk a stipulation in writing waiving a jury. The finding of the court upon the facts, which may be either general or special, shall have the same effect as the verdict of a jury.”

Revised Statutes (Second Edition), § 649, p. 118; Act of Congress of 3d March, 1865, ch. 86, sec. 4, 13 Stat. at Large, 501.

“And the trial of issues of fact in the Circuit Courts shall, in all suits except those of equity and of admiralty and maritime jurisdiction, be by jury.”

Act of Congress of 3d March, 1875 (Removal Act), ch. 137, sec. 3, last paragraph, 18 Stat. at Large, 471; Act of Congress of 3d March, 1803, ch. 40, sec. 2, 2 Stat. at Large, 244; Act of Congress of 30th June, 1864, ch. 174, sec. 13, 13 Stat. at Large, 310; Act of Congress of 1st June, 1872, ch. 255, sec. 2, 17 Stat. at Large, 196.

“Sec. 700. When an issue of fact in any civil cause in a Circuit Court is tried and determined by the court without the intervention of a jury, according to section six hundred and forty-nine, the rulings of the court in the progress of the trial of the cause, if excepted to at the time, and duly presented by a bill of exceptions, may be reviewed by the Supreme Court upon a writ of error or upon appeal; and when the finding is special the review may extend to the determination of the sufficiency of the facts found to support the judgment.”

Revised Statutes (Second Edition), § 700, p. 131; Act of Congress of 24th September, 1789, ch. 20, sec. 22, 1 Stat. at Large, 84; Act of Congress of 3d March, 1803, ch. 40, sec. 2, 2 Stat. at Large, 244; Act of Congress of 3d March, 1865, ch. 86, sec. 4, 13 Stat. at Large, 501.

“Sec. 701. The Supreme Court may affirm, modify, or reverse any judgment, decree, or order of a Circuit Court, or District Court acting as a Circuit Court, or of a District Court in prize causes, lawfully brought before it for review, or may direct such judgment, decree, or order to be rendered, or such further proceedings to be had by the inferior court, as the justice of the case may require.”

Revised Statutes (Second Edition), § 701, all except last sentence, p. 131; Act of Congress of 24th September, 1789, ch. 20, sec. 22, 1 Stat. at Large, 83.

“Sec. 709. A final judgment or decree in any suit in the highest court of a State, in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision is against their validity; or where is drawn in question the validity of a statute of, or an authority exercised under any State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of their validity; or where any title, right, privilege, or immunity is claimed under the Constitution, or any treaty or statute of, or commission held or authority exercised under, the United States, and the decision is against the title, right, privilege, or immunity specially set up or claimed, by either party, under such Constitution, treaty, statute, commission, or authority, may be re-examined and reversed or affirmed in the Supreme Court upon a writ of error. The writ shall have the same effect as if the judgment or decree complained of had been rendered or passed in a court of the United States. The Supreme Court may reverse, modify, or affirm the judgment or decree of such State court, and may, at their discretion, award execution, or remand the same to the court from which it was removed by the writ.”

Revised Statutes (Second Edition), § 709, p. 133, as amended by Act of Congress of 18th February, 1875, ch. 80, 18 Stat. at Large, 318. See also

Act of Congress of 24th September, 1789, ch. 20, sec. 25, 1 Stat. at Large, 85; Act of Congress of 5th February, 1867, ch. 28, sec. 2, 14 Stat. at Large, 386.

“Sec. 953. A bill of exceptions allowed in any cause shall be deemed sufficiently authenticated if signed by the judge of the court in which the cause was tried, or by the presiding judge thereof, if more than one judge sat on the trial of the cause, without any seal of court or judge being annexed thereto.”

Revised Statutes (Second Edition), § 953, p. 180; Act of Congress of 1st June, 1872, ch. 255, sec. 4, 17 Stat. at Large, 197.

“Sec. 1011. There shall be no reversal in the Supreme Court or in a Circuit Court upon a writ of error, for error in ruling any plea in abatement, other than a plea to the jurisdiction of the court, or for any error in fact.”

Revised Statutes (Second Edition), § 1011, p. 189, as amended by Act of Congress of February 18th, 1875, ch. 80, 18 Stat. at Large, 318. See also Act of Congress of 24th September, 1789, ch. 20, sec. 22, 1 Stat. at Large, 84; Act of Congress of 2d March, 1803, ch. 40, sec. 2, 2 Stat. at Large, 244.

“Sec. 1013. Where appeal is duly taken by both parties from the judgment or decree of a Circuit or District Court to the Supreme Court, a transcript of the record filed in the Supreme Court by either appellant may be used on both appeals, and both shall be heard thereon in the same manner as if records had been filed by the appellants in both cases.”

Revised Statutes (Second Edition), § 1013, p. 189; Act of Congress of 6th August, 1861, ch. 61, sec. 1, 12 Stat. at Large, 319.

AN ACT CONCERNING THE PRACTICE IN TERRITORIAL COURTS, AND APPEALS THEREFROM.

* * * * *

“Sec. 2. That the appellate jurisdiction of the Supreme Court of the United States over the judgments and decrees of said Territorial courts in cases of trial by jury shall be exercised by writ of error, and in all other cases by appeal according to such rules and regulations as to form and modes of proceeding as the said Supreme Court have prescribed or may hereafter prescribe:

“*Provided*, That on appeal, instead of the evidence at large, a statement of the facts of the case in the nature of a special verdict, and also the rulings of the court on the admission or rejection of evidence when excepted to, shall be made and certified by the court below, and transmitted to the Supreme Court together with the transcript of the proceedings and judgment or decree; but no appellate proceedings in said Supreme Court, heretofore taken upon

any such judgment or decree, shall be invalidated by reason of being instituted by writ of error or by appeal:

“ *And provided further*, That the appellate court may make any order in any case heretofore appealed, which may be necessary to save the rights of the parties; and that this act shall not apply to cases now pending in the Supreme Court of the United States where the record has already been filed.”

Act of Congress of 7th April, 1874, ch. 80, sec. 2, 18 Stat. at Large, 27. See also Revised Statutes (Second Edition), § 698, p. 130; §§ 702, 703, pp. 131, 132; §§ 1866-1868, p. 330; §§ 1907, 1908, 1909, 1911, pp. 336, 337. See also Act of Congress of 23d June, 1874, ch. 469, 18 Stat. at Large, 253, respecting Utah Territory.

“ Sec. 1. That the Circuit Courts of the United States, in deciding causes of admiralty and maritime jurisdiction on the instance-side of the court, shall find the facts and the conclusions of law upon which it renders its judgments or decrees, and shall state the facts and conclusions of law separately.

“ And in finding the facts, as before provided, said court may, upon the consent of the parties who shall have appeared and put any matter of fact in issue, and subject to such general rules in the premises as shall be made and provided from time to time, impanel a jury of not less than five and not more than twelve persons, to whom shall be submitted the issues of fact in such cause, under the direction of the court, as in cases at common law.

“ And the finding of such jury, unless set aside for lawful cause, shall be entered of record, and stand as the finding of the court, upon which judgment shall be entered according to law.

“ The review of the judgments and decrees entered upon such findings by the Supreme Court, upon appeal, shall be limited to a determination of the questions of law arising upon the record, and to such rulings of the Circuit Court, excepted to at the time, as may be presented by a bill of exceptions, prepared as in actions at law.

“ Sec. 2. That said courts, when sitting in equity for the trial of patent causes, may impanel a jury of not less than five and not more than twelve persons, subject to such general rules in the premises as may, from time to time, be made by the Supreme Court, and submit to them such questions of fact arising in such cause as such Circuit Court shall deem expedient;

“ And the verdict of such jury shall be treated and proceeded upon in the same manner and with the same effect as in the case of issues sent from chancery to a court of law and returned with such findings.”

Act of Congress of 16th February, 1875, ch. 77, sec. 1 and 2, 18 Stat. at Large, 315. See also Revised Statutes (Second Edition), §§ 629, par. 9, 631, 693, pp. 111, 113 and 129.

“Sec. 5. That all cases arising under the provisions of this act in the courts of the United States shall be reviewable by the Supreme Court of the United States, without regard to the sum in controversy, under the same provisions and regulations as are now provided by law for the review of other causes in said court.”

Act of Congress of 1st March, 1875 (Civil Rights Act), ch. 114, sec. 5, 18 Stat. at Large, 335. See also Revised Statutes (Second Edition), §§ 691, 699, par. 4, pp. 128, 131; and Act of Congress of 16th February, 1875, ch. 77, 18 Stat. at Large, 315.

“Sec. 4. The final judgment or decree of the Supreme Court of the District of Columbia in any case where the matter in dispute, exclusive of costs, exceeds the value of twenty-five hundred dollars, may be re-examined and reversed or affirmed in the Supreme Court of the United States, upon writ of error or appeal in the same manner and under the same regulations as are provided in cases of writs of error on judgments or appeals from decrees rendered in a Circuit Court.”

Act of Congress of 25th February, 1879, ch. 99, sec. 4, 20 Stat. at Large, 320. See also Revised Statutes (Second Edition), §§ 691-701, pp. 128-131.

AUTHORITIES

MORE ESPECIALLY APPLICABLE TO THIS RULE.

1. The Supreme Court refers to the inconvenient and unnecessary practice of spreading the judge's charge *in extenso* upon the record.

Evans v. Eaton, 7 Wheaton, 356 (426). (February Term, 1822.)

2. The charge of the court below must not be brought at length before the Supreme Court for review. It is an unauthorized practice and extremely inconvenient both to the inferior and to the appellate court.

Carver v. Jackson, 4 Pet. 1 (80). (January Term, 1830.)

3. Exceptions taken on the trial of a case before a jury for the purpose of submitting to the revision of the Supreme Court questions of law decided by the Circuit Court during the trial, cannot be taken in such a form as to bring the whole charge of the judge before the Supreme Court; a charge in which he not only states the results of the law from the facts, but sums up all the evidence. The case of *Carver v. Jackson*, 4 Pet. 80 (Authority No. 2 under this Rule), cited and approved of. The Supreme Court states in its opinion that “the difficulty, then, which appeared to the counsel to be insurmountable, must be overcome by this court. We must perform the impracticable task of separating the remarks on the law from those on the facts of the case, and thus draw the whole matter into examination again. The inconvenience of this practice has been seriously felt and has been seriously disapproved. We think it irregular and improper.”

Ex parte Crane, 5 Pet. 190 (200). (January Term, 1831.)

4. The bringing up, with the record of the proceedings in the Circuit Court, the charge of the court at large, is a practice which the Supreme Court has often disapproved, and deems incorrect.

Conard v. The Pacific Insurance Company, 6 Pet. 262. (January Term, 1832.)

5. The Supreme Court discountenances the practice of spreading the whole charge of the court below on the record, and refers to the Rule adopted at the last term to suppress the practice. (See Original General Rule 38, 6 Pet. iv.)

Magniac v. Thompson, 7 Pet. 348 (390). (January Term, 1833.)

6. The Supreme Court state that they have frequently remonstrated against the practice of spreading the charge of the judge at length upon the record, instead of the points excepted to, as productive of no good, but much inconvenience.

Gregg v. Lessee of Sayre & Wife, 8 Pet. 244. (January Term, 1834.)

7. The Supreme Court reiterates the rule which forbids the insertion of the whole of the charge of the court below to the jury in a general bill of exceptions, but requires that the part excepted to shall be specifically set out.

Stimpson v. West Chester Railroad Company, 3 How. 553. (January Term, 1845.)

[See same case under Rule 14 on another point.]

8. When the whole charge of the judge to the jury is incorporated into the record, the Supreme Court declares that this mode of making up the error books is exceedingly inconvenient and embarrassing to the Court, and is a departure from familiar and established practice; that so far as error is founded upon the bill of exceptions incorporated into the record, it lies only to exceptions taken at the trial to the ruling of the law by the judge, and to the admission or rejection of evidence; that only so much of the evidence given on the trial as may be necessary to present the legal questions thus raised and noted should be carried into the bill of exceptions; and that all beyond serves only to encumber and confuse the record, and to perplex and embarrass both Court and counsel. The earlier forms under the statute are models which it would be wise to consult and adhere to.

Zeller's Lessee v. Eckert, 4 How. 289 (297). (January Term, 1846.)

9. The practice of excepting generally to a charge of the Court to the jury, without setting out specifically the points excepted to, censured.

Stimpson v. West Chester Railroad Company, 4 How. 380 (401). (January Term, 1846.)

10. It must appear by the transcript, not only that instructions were given and refused at the trial, but also that the party who complained of them

excepted while the jury were at bar; and if it is not done, the charge of the court, or its refusal to charge as requested form no part of the record, and cannot be carried before the appellate court by writ of error. The exception need not be drawn out in form and signed before the jury retire, but it must be taken in open court, and must appear by the certificate of the judge, who authenticates it, to have been so taken.

Phelps v. Mayer, 15 How. 160. (December Term, 1853.)

11. An allegation in a bill of exceptions that "the charge of the court, the verdict of the jury, and the judgment below are each against, and in conflict with, the Constitution and laws of the United States, and therefore erroneous," is too general and indefinite to come within the provisions of the act of Congress, or the decisions of the Supreme Court.

Maxwell v. Newbold, 18 How. 511. (December Term, 1855.)

12. If a series of propositions be embodied in instructions, and the instructions are excepted to in a mass, if any one of the propositions be correct, the exception must be overruled. Attention called to the violation of Original General Rule 38 of January Term, 1832. 6 Pet. iv.

Johnston v. Jones, 1 Black, 209 (220). (December Term, 1861.)

13. When an objection is to the ruling of the court, it is indispensable that the ruling should be stated, and that it should also be alleged that the party then and there excepted.

Pomeroy's Lessee v. Bank of Indiana, 1 Wall. 592 (602). (December Term, 1863.)

14. A plaintiff in error cannot avail himself of an exception to propositions submitted to a jury by the court below which was general and not specific. *Johnston v. Jones*, 1 Black, 220 (Authority No. 12 under this Rule), cited and approved.

Rogers v. The Marshal, 1 Wall. 644 (654). (December Term, 1863.)

15. The practice of counsel in excepting to instructions as a whole, instead of excepting, as they ought, to each instruction specifically, severely commented on, and attention called to the fact that the penalty for such neglect is that the exception to the whole series of propositions may be overruled, no matter how wrong some may be, if any one of them all be correct, and when, if counsel had excepted specifically, a different result might have followed.

Harvey v. Tyler, 2 Wall. 328 (339). (December Term, 1864.)

16. Where the plaintiff requested the court below to charge several propositions, which the court declined to charge as requested, but charged in its own language and fully upon the case as presented by the evidence, and the plaintiff excepted to the refusal of the court, and excepted also "to so much of the charge of the court as given, as was in conflict with and variant from the several propositions," the Supreme Court held that the charge below was confessedly sound in most of its points, and that if the

entire charge of the court is excepted to, or a series of propositions contained in it is excepted to in gross, and any portion thus excepted to is sound, the exception cannot be sustained. One object of an exception is to call the attention of the circuit judge to the precise point as to which it is supposed that he has erred, that he may then consider it and give new and different instructions to the jury, if in his judgment it will be proper to do so.

Beaver v. Taylor, 93 U. S. 46 (54). (October Term, 1876.)

17. The omission of the court below to instruct the jury on a particular aspect of the case, however material, cannot be assigned for error, unless the attention of the court was called to it, with the request to instruct upon it. It is not proper for the Supreme Court to intimate an opinion upon a question not presented by the record.

Mutual Life Insurance Company v. Snyder, 93 U. S. 393. (October Term, 1876.)

18. Where the charge of the judge to the jury is of a character to mislead the jury, the error is one of law, and may be corrected in an appellate court; but in every such case the part of the charge to which the exception is addressed ought to be distinctly pointed out. Unless that be done, the exception cannot be sustained as a ground for reversing the judgment, as that can only be done for error of law.

Railroad Company v. Varnell, 98 U. S. 479 (485). (October Term, 1878.)

19. Where the bill of exceptions showed a paper signed by the defendant's counsel, in which the court was asked to affirm a series "of propositions of law as governing the case," seven in number, which were presented as a whole, refused as a whole, and excepted to in the same manner, the Supreme Court *held* that if any one of them were rightfully rejected, no error was committed, because it was not the duty of the court below to do anything more than to pass upon the prayer as an entirety. None of the evidence given or offered on the trial was set out in the bill of exceptions, and the Supreme Court states that probably no bill of exceptions was ever certified to an appellate court before, which contained nothing but the charge and the objections made to it.

Worthington v. Mason, 101 U. S. 149. (October Term, 1879.)

20. According to a well settled rule of the Supreme Court, if either one of any propositions which the court is requested to charge be erroneous, or, in other words, if all the charge asked for is not sound law, the court below did right in refusing the prayer which presented the propositions as a whole.

United States v. Hough, 103 U. S. 71, (72). (October Term, 1880.)

21. The Supreme Court repeats of the practice of setting forth the charge of the court below in full, what it condemned in *Lincoln v.*

Clafin, 7 Wall. 132, (137) (Authority No. 56 under this Rule), viz.: the practice of inserting the entire evidence in the record.

United States v. Rindskopf, 105 U. S. 418. (October Term, 1881.)

AUTHORITIES

RELATING TO BILLS OF EXCEPTIONS GENERALLY WHERE THE TRIAL IS BY JURY.

22. A case wherein the Supreme Court stated as follows, viz.: "It is exceedingly clear, that the bill of exceptions is conclusive upon this court. We cannot presume, or suspect, that any material part of the evidence is omitted. On this objection, therefore, nothing now need be added."

Bingham v. Cabbot, 3 Dall. 19 (38). (February Term, 1795.)

23. A bill of exceptions is part of the record and comes up with it. For that reason the acknowledgment of the judge's seal is unnecessary; but if the bill of exceptions had not been tacked to the record, such an acknowledgment might have been proper.

The Supreme Court states, that the whole of the record is exhibited in a loose and imperfect state, but that the Court ought not to travel out of the bill of exceptions to find matter to support it.

Clarke v. Russell, 3 Dall. 415 (419, 423), notes. (February Term, 1798.)

24. A bill of exceptions ought to state that evidence was offered of the facts upon which the opinion of the court was prayed.

Vasse v. Smith, 6 Cranch, 226. (February Term, 1810.)

25. The Supreme Court stated that one of the exceptions taken in the case, afforded the court an opportunity to remark how much more conducive to the purposes of justice it would be to substitute special verdicts, and demurrers to evidence, for the tedious and embarrassing practice of the court (Circuit Court for the District of Columbia) from which this case came up. And the Court also stated that it was a fact that the bill of exceptions claimed a right of recovery, without stating any loss or damage whatever; that each bill of exceptions must be considered as presenting a distinct, substantive case; that it was on the evidence stated in itself alone that the Court was to decide; that they could not go beyond this and collect other facts which must have been in the mind of the party, and the insertion of which in the bill of exceptions could alone have sanctioned the opinion as prayed for. The opinion prayed for was that if the jury believed the various facts therein detailed, it was incumbent on the defendant to make out a just, reasonable, and sufficient excuse for omitting to forward the letter described. "But," says the Supreme Court, "unless an individual has sustained some loss or damage by an omission of that kind, why should the postmaster be held to make out a defence."

Dunlop v. Munroe, 7 Cranch, 242, (270). (February Term, 1812.)

26. It is not necessary that a bill of exceptions should be formally drawn

and signed before the trial is at an end. The exception may be taken at the trial, and noted by the court, and may, afterwards, during the term be reduced to form, and signed by the judge. But in such cases it is signed *nunc pro tunc*, and purports, on its face, to be the same as if actually reduced to form, and signed during the trial. It would be a fatal error if it were to appear otherwise.

Walton v. United States, 9 Wheat. 651. (February Term, 1824.)

27. In considering the admissibility of testimony in the Court above, the party excepting is to be confined to the specific objection taken at the trial.

Hinde's Lessee v. Longworth, 11 Wheaton, 199. (February Term, 1826.)

28. *Held* in effect that there was no error in the decision of the Circuit Court overruling the motion of the defendants' counsel to exclude the plaintiff's evidence, because it does not appear from the bill of exceptions that he designated any particular piece or part of the evidence as objectionable, and moved the court to exclude it.

Elliott v. Peirsol, 1 Pet. 328 (338). (January Term, 1828.)

29. Where the record contains, embodied in the bill of exceptions, the whole of the testimony and evidence offered at the trial, by each party, in support of the issue, it being very voluminous, and no exception being taken to its competency or sufficiency, either generally, or for any particular purpose, *held* that the testimony was improperly before the court for consideration, and formed an expensive and unnecessary burden upon the record.

Pennock v. Dialogue, 2 Pet. 1 (15). (January Term, 1829.)

30. The practice respecting the signing of a bill of exceptions stated to be that the law requires that a bill of exceptions should be tendered at the trial, but that the usual practice is to request the judge to note down in writing the exceptions, and afterwards, during the session of the court, to hand him the bill of exceptions, and submit it to his correction from his notes; that it would be dangerous to allow a bill of exceptions, of matters dependent on memory, at a distant period, when the judge may not accurately recollect them; that if a party intends to take a bill of exceptions, he should give notice to the judge at the trial, and if he does not file it at the trial, he should move the judge to assign a reasonable time within which he may file it, and that a practice to sign it after the term must be understood to be a matter of consent between the parties, unless the judge has made an express order in the term, allowing such a period to prepare it.

Ex parte Martha Bradstreet, 4 Pet. 102. (January Term, 1830.)

31. In a case, where, at the trial, several exceptions were taken by the plaintiff to the opinions expressed or refused by the court, the Supreme Court passed over a number of the exceptions, stating that they wished it to be understood, as a general rule, that where there were various bills of exceptions filed, according to the local practice, if, in the progress of the

cause, the matters of any of those exceptions become wholly immaterial to the merits, as they are finally made out at the trial, they are no longer assignable as error, however they may have been ruled in the court below; and that there must be some injury to the party, to make the matter generally assignable as error.

Greenleaf's Lessee v. Birth, 5 Pet. 132 (135). (January Term, 1831.)

32. Although the plaintiff's counsel objected to a question as leading, and said that he excepted to the opinion of the court, yet as no exception was actually prayed by the party or signed by the judge, the Supreme Court held that they could not consider the exception as actually taken, and must suppose it was abandoned.

Scott v. Lloyd, 9 Pet. 418 (442). (January Term, 1835.)

33. It is the duty of a party taking exception to the admissibility of evidence to point out the part excepted to, when the evidence consists of a number of particulars, so that the attention of the court may be drawn to the particular objection.

Moore v. Bank of Metropolis, 13 Pet. 302 (310). (January Term, 1839.)

34. Where a general objection is made in the court below to the reception of testimony, without stating the grounds of the objection, the Supreme Court considers it as vague and nugatory; nor ought it to be tolerated in the court below.

Camden v. Doremus, 3 How. 515 (530). (January Term, 1845.)

35. The practice respecting a bill of exceptions as laid down in *Walton v. United States*, 9 Wheat. 651 (Authority No. 26 under this Rule), and *Ex parte Martha Bradstreet*, 4 Pet. 102 (Authority No. 30 under this Rule), approved and will be strictly adhered to by the Supreme Court.

Brown v. Clarke, 4 How. 4 (15). (January Term, 1846.)

36. Where the Statutes of Iowa provided a mode for taking bills of exceptions, by directing that they should be tendered to the judge for his signature during the progress of the trial, although the judges may, and often do, sign bills of exceptions *nunc pro tunc*, after the trial, the Supreme Court held that such was the English practice under the Statute of Westminster 2, and such was the practice recognized by the Supreme Court; and that, therefore, when a bill of exceptions was signed two years after the trial, the Supreme Court of Iowa were right in striking it out of the record.

Sheppard v. Wilson, 6 How. 260. (January Term, 1848.)

37. Where upon its face a bill of exceptions appears to have been regularly signed, the Supreme Court cannot presume against the record.

United States v. Hodge, 6 How. 279 (282). (January Term, 1848.)

38. Although the mode of drawing up a bill of exceptions is defective, because the material facts or proofs on which the instructions rest are not

inserted before the instructions, yet if the object and character of the exceptions are intelligible, by means of what is stated by the judge in connection with them, the Supreme Court will proceed to decide the case.

United States v. Morgan, 11 How. 154 (159). (December Term, 1850.)

39. A case where the bill of exceptions stated that it was taken on the 8th day of April, 1848, while the record showed that the suit was not instituted until July 11th, 1848, and that the trial took place on the 7th and 8th of May, 1849. The Supreme Court *held* that, although the exception was very loosely framed, the date of April 8th, 1848, was evidently a clerical mistake; and that as the bill of exceptions was regularly certified by the Circuit Court as a part of the proceedings in the case, and as taken at the trial, the certificate of the Circuit Court was conclusive upon the Supreme Court, and the exception must be regarded as duly taken and regularly brought up by the writ of error.

The United States v. Wilkinson, 12 How. 246 (252). (December Term, 1851.)

40. The record must show that the exception was taken at that stage of the trial when its cause arose. The time and manner of placing the evidence of the exception formally on the record are matters belonging to the practice of the court in which the trial was held. The convenient dispatch of business, in most cases, does not allow the preparation and signature of bills of exceptions during the progress of a trial. Their requisite certainty and accuracy can hardly be secured, if any considerable delay afterwards be permitted; and it is for each court in which cases are tried to secure, by its rules, that prompt attention to the subject necessary for the preservation of the actual occurrences on which the validity of the exception depends; and so to administer those rules that no artificial or imperfect case shall be presented to the Supreme Court for adjudication.

Turner v. Yates, 16 How. 14 (29). (December Term, 1853.)

41. The equity of the Statute of Westminster 2, allowing bills of exceptions, embraces all such judgments or opinions of the court which arise in the course of a cause, as are the subjects of revision by an appellate court, and do not otherwise appear on the record. But to present a question to the Supreme Court, the subordinate tribunal must ascertain the facts upon which the judgment or opinion excepted to, is founded; therefore, where there was a reference in the Circuit Court, and the bill of exceptions set out the objections to the award, together with the testimony of the arbitrator who was examined in open court, and that testimony showed the facts upon which the objections were founded, it was a sufficient exception.

York Railroad Company v. Myers, 18 How. 246. (December Term, 1855.)

42. A case wherein the Supreme Court stated that the decision of the

court below on a motion for a new trial, which was excepted to, affords no ground for a writ of error, and stated that it is desirable that points of exceptions and instructions asked from the court to the jury should be as few and as concisely expressed as may be consistent with the interests of the respective parties.

Doswell v. De La Lanza, 20 How. 29 (32, 34). (December Term, 1857.)

43. In a case which was brought up by a writ of error to the Circuit Court of the United States for the Southern District of Alabama, it appeared that the Circuit Court, by a general rule, adopted the practice of the State courts, which was regulated by a statute providing that no bill of exceptions could be signed after the adjournment of the court, unless by the consent of counsel. The Supreme Court *held* that the statute of Alabama, and the regulation it prescribed to the courts of the State, could have no influence on the practice of a court of the United States, unless adopted by a rule of the court; and that it was always in the power of the court to suspend its own rules, or to except a particular case from its operation, whenever the purpose of justice required it; that the attention of the Supreme Court has, upon several occasions, been called to this subject, and that the rule established by its decisions will be found to be this: The exception must show that it was taken and reserved by the party at the trial, but it may be drawn out in form and sealed by the judge afterwards; and the time within which it may be drawn out and presented to the court, must depend on its rules and practice, and on its own judicial discretion; that in this case the judge who tried the case below deemed it his duty to seal and certify the exception to the Supreme Court, and under the circumstances stated in the exception and note thereto, and the Supreme Court thought he was right in doing so; and that the exception was legally before the Supreme Court as a part of the record of the proceedings of the court below.

It appeared from the bill of exceptions that the plaintiff's counsel objected to certain evidence at the trial, and explanations attached to the bill of exceptions showed that during the term of the court the attorney for the United States presented a bill of exceptions on Saturday before the court adjourned, which was on Wednesday. That on Monday morning the bill was handed to the United States Attorney, with the request that he submit it to the opposing counsel, and that on the third day after this the minutes were signed and the court adjourned, and the judge duly certified that he heard nothing further from the bill until the 9th or 10th of May, when it was presented by the plaintiff's attorney again, with the written objections of the attorneys of the defendant, that it should be signed after the adjournment; and that the clerk was requested to subjoin the explanation to the bill of exceptions, and did so.

United States v. Breitling, 20 How. 252. (December Term, 1857.)

44. In a case where the record did not contain either a bill of exceptions, a special verdict, or an agreed statement of facts, the Supreme Court dis-

cussed at length the province and effect of a bill of exceptions, special verdict, and agreed statement of facts, and the proper practice in relation thereto, and refused to so far depart from the settled practice and regular course of proceeding as to give an effect to a paper which neither its contents nor its terms would warrant, and declined to attempt to do for the plaintiff in error what it was his duty to have done at the trial, and before the writ of error was sued out, viz.: the Supreme Court declined to consider a paper in the form of a report of the judge who presided at the trial, and which was signed by him and sealed, and which concluded with giving liberty to either party to turn the case into a special verdict or bill of exceptions, which as matter of fact was not done, as either a special verdict or a bill of exceptions, holding that "where a case shall be made with leave to turn the same into a special verdict or bill of exceptions, the party shall not be at liberty to do either, at his election, but the court may, if they think proper, prescribe the one which he shall adopt" (Conk. Trea., 3d ed., p. 444), and also holding that nothing less than the presence and assent of the court can give any legal validity to a special verdict, and that in respect to a bill of exceptions, it must always be signed and sealed by the judge, or else it will be a nullity.

Suydam v. Williamson, 20 How. 427 (438). (December Term, 1857.)

45. In a case brought up on a writ of error to the District Court of the United States for the Western District of Texas, while the case was pending on the chancery side of the court, on motion of the plaintiffs, the court below struck out the answer of the defendants, and it was insisted in the Supreme Court that the action of the court below in that behalf was erroneous. The Supreme Court stated that all they thought necessary to say, in reply to that objection, was to remark that the cause was subsequently transferred to the law docket without objection, and that a bill of exceptions did not bring into the Supreme Court any of the prior proceedings for revision, and that whatever might be the practice in the State courts, counsel must bear in mind that there is a broad distinction between a suit at law and a suit in equity, and must understand that the Supreme Court cannot and will not overlook that distinction.

Nations v. Johnson, 24 How. 195 (206.) (December Term, 1860.)

46. Only so much of the evidence given on the trial as may be necessary to present the legal questions raised and noted, should be carried into the bill of exceptions. All beyond serves only to encumber and confuse the record and to perplex and embarrass both court and counsel. Citing with approval *Zeller's Lessee v. Eckert*, 4 How. 297 (Authority No. 8 under this Rule).

Johnston v. Jones, 1 Black, 209 (220). (December Term, 1861.)

47. The plaintiff in the course of the trial was offered as a witness, and was objected to by the defendants, as incompetent, and his testimony was excluded. It was admitted that the testimony of the parties to the suit was competent, according to the rules of evidence in the State courts of

Ohio. The facts which the witness offered to prove were not stated in the bill of exceptions. The Supreme Court stated that they could not, therefore, disregard the exception upon the idea that the testimony could not have been material, or could not have changed the result of the verdict. Judgment was reversed.

Vance v. Campbell, 1 Black, 427 (430). (December Term, 1861.)

48. A case similar to *Vance v. Campbell*, 1 Black, 427 (430) (Authority No. 47 under this Rule), and where the only question presented by the bill of exceptions was whether or not the plaintiff was a competent witness to give testimony in his own behalf. It was objected that the bill of exceptions did not state that the witness was material, and that hence there could be no error in his exclusion. The Supreme Court stated that though it would have been more in conformity with the usual practice to have stated that the witness was material to sustain the issue, they thought that enough was stated to imply the materiality, and that this objection could not be maintained.

The Supreme Court stated further that the bill of exceptions was brief, presenting only this single exception, and stating no more of the case than was necessary, which practice the Court commended.

Haussknecht v. Claypool, 1 Black, 431 (435). (December Term, 1861.)

49. Undoubtedly the rule is that the record must show that the exception relied on was taken and reserved by the party at the trial; but it is a mistake to suppose that it has ever been held by the Supreme Court that it must be drawn out and sealed by the judge before the jury retire from the bar of the court. Great inconvenience would result from such a requirement, and in point of fact there is no such rule. On the contrary, it is always allowable, if the exception be seasonably taken and reserved, that it may be drawn out in form and sealed by the judge afterwards; and the time within which it may be so drawn out and presented to the court must depend on the rules and practice of the court and the judicial discretion of the presiding judge.

Dredge v. Forsyth, 2 Black, 563. (December Term, 1862.)

Kellogg v. Forsyth, 2 Black, 571. (December Term, 1862.)

50. When the objection is, that the instructions of the court laid too great stress upon the testimony of a particular witness, the bill of exceptions should embody the testimony, or so refer to it as to make it part of the record, else the Supreme Court is bound to assume that there was that in the testimony which justified the instruction.

Russell v. Ely, 2 Black, 575. (December Term, 1862.)

51. It is well settled that bills of exceptions are restricted to matters which occur during the progress of the trial; but it is not necessary, neither is it the practice, to reduce to form every exception as it is taken, and before the trial is at an end. It will do for the judge to note them as they occur, and after the trial is over, if it is desirable to preserve them,

they can be properly embodied in a bill of exceptions. In this case the bill of exceptions was unskilfully drawn, but the Supreme Court *held* that it clearly enough appeared that the rulings were excepted to in proper time, and when the cause was on trial and not afterwards; and that therefore the Supreme Court would not allow a valuable right to be defeated because the judge carelessly used a word in the present tense, when the true expression of his meaning required the use of a word in the past tense. The bill of exceptions was held to be valid.

Simpson & Co. v. Dall, 3 Wall. 460 (473). (December Term, 1865.)

52. Where a bill of exceptions stated that "plaintiff offered in evidence an instrument in writing on the back of the protest, purporting to be a certificate of the notary, that he had notified the indorsee of the note, *which is hereunto annexed for reference as a part of this bill*, to which certificate counsel for defendant objected," &c., and where no such paper was found annexed to the bill of exceptions, nor in any manner referred to, or marked, or identified as being a part of the bill of exceptions, or as the paper which was offered in evidence, the Supreme Court *held* that if a paper which is to constitute a part of a bill of exceptions is not incorporated into the body of the bill, it must be annexed to it, or so marked by letter, number, or other means of identification mentioned in the bill, as to leave no doubt that it is, when found in the record, the one referred to in the bill of exceptions; and that where there is merely a copy attached to, and a part of, the pleading, it may or may not be a perfect copy of the paper which was offered in evidence; but that whether it be so or not, it is certain that it does not become a part of the bill of exceptions by being attached to the pleading.

Leftwitch v. Lecanu, 4 Wall. 187. (December Term, 1866.)

53. The Supreme Court protests against attempts at mystifying the merits of a case by a record called a bill of exceptions, which is a sort of abstract or index to the history of another case.

Evans v. Patterson, 4 Wall. 224. (December Term, 1866.)

54. *Held*, That the 8th Section of the Act of Congress of March 3d, 1863, ch. 91, 12 Stat. at Large, 764, providing among other things "That if, upon the trial of a cause, an exception be taken, . . . the bill of exceptions need not be sealed or signed," has reference only to carrying such rulings from the Special to General Term of the Supreme Court of the District of Columbia, and does not apply to cases brought from the Supreme Court of the District of Columbia to the Supreme Court of the United States for revision.

The Supreme Court states that the settled practice in that Court is that neither the rulings of the court below in admitting or rejecting evidence, or in giving or refusing instructions, can be brought there for revision in any other mode than by a regular bill of exceptions; that final judgment in a Circuit Court may be re-examined in the Supreme Court and reversed

or affirmed upon a writ of error, founded upon an agreed statement of facts, a special verdict, a demurrer to a material pleading, or a demurrer to evidence, as well as by a bill of exceptions; but that none of the other modes will enable the appellate court to revise the rulings of the court below in refusing to instruct the jury as requested, or the instructions as given, or the rulings of the court in admitting or rejecting evidence; that such rulings rest in parol and can only be incorporated into the record by a bill of exceptions, and of course cannot be re-examined in any other way. The ruling in *Pomeroy's Lessee v. Bank of Indiana*, 1 Wall. 592 (602) (Authority No. 13 under this Rule), approved and re-affirmed.

Thompson v. Riggs, 5 Wall. 633 (675). (December Term, 1866.)

55. Judgment affirmed where the bill of exceptions is neither signed nor sealed by the judge below.

Mussina v. Cavazos, 6 Wall. 355 (363). (December Term, 1867.)

56. A bill of exceptions should only present the rulings of the court upon some matter of law, as upon the admission or exclusion of evidence, and should contain only so much of the testimony, or such a statement of the proofs made or offered, as may be necessary to explain the meaning of the rulings upon the issues involved. The practice of sending up to the Supreme Court bills filled with superfluous and irrelevant matter is condemned.

Lincoln v. Claflin, 7 Wall. 132 (137). (December Term, 1868.)

57. To same effect as and referring specifically to *Lincoln v. Claflin* (Authority No. 56 under this Rule), and to Rule 4.

Laber v. Cooper, 7 Wall. 565. (December Term, 1868.)

58. To be of any avail exceptions must not only be drawn up so as to present distinctly the ruling of the court upon the points raised, but they must be signed and sealed by the presiding judge. Unless so signed and sealed they do not constitute any part of the record which can be considered by an appellate court.

Young v. Martin, 8 Wall. 354. (December Term, 1869.)

59. A statement of fact made and filed by a judge several days after the issue and service of a writ of error is a nullity. *Generes v. Bonnemere*, 7 Wall. 564 (Authority No. 102 under this Rule), affirmed.

Avendano v. Gay, 8 Wall. 376. (December Term, 1869.)

60. When a bill of exceptions did not purport to set out all the evidence, and it did not appear what other evidence, if any, was given in the Court below, the Supreme Court stated that they would not take judicial notice of facts which do not appear in evidence, however well satisfied they might be on the subject. Such facts should be proved by proper testimony; but error was not to be presumed. It must be affirmatively shown. The reason of the refusal by the court to instruct as asked

by the defendants might have been that certain facts might have been proved, but the propriety of the refusal depended upon the state of the evidence; and if these facts were not in proof, the bill of exceptions, under the circumstances, should have so stated. It did not appear from anything in the record that the court erred in refusing to give the instruction, and the presumption was the other way. The Supreme Court therefore refused to reverse.

Wiggins v. Burkham, 10 Wall. 129 (132). (December Term, 1869.)

61. A case where a preliminary point was raised that the exception was not taken at the trial, but was taken afterwards on the overruling of a motion for a new trial. *Held*, That it seemed probable that the formal bill of exceptions was not signed or settled until after the motion was overruled, but that it was a common practice, convenient in dispatch of business, to permit the party to claim and note an exception when occasion arises, but defer reducing it to a formal instrument until the trial is over; and that from the language used at the beginning and end of the bill, the Supreme Court are of the opinion that the objections were made during the trial as the rulings excepted to were made.

Railroad Co. v. Reeves, 10 Wall. 176 (188). (December Term, 1869.)

62. Where a bill of exceptions dated during the term, and in fact filed before the judgment on the verdict was entered, shows that the exceptions were taken *at* the trial, that is sufficient, although it does not purport to have been tendered and signed during the trial.

French v. Edwards, 13 Wall. 506 (516). (December Term, 1871.)

63. The Supreme Court again objects to the practice of bringing before them a bill of exceptions which embodies all the evidence offered, and where the arguments address themselves to the entire merits on this evidence, and where counsel argue the whole case as if the verdict concluded nothing.

Gregg v. Moss, 14 Wall. 564 (568). (December Term, 1871.)

64. Where there are no requests for specific instructions, it is abundantly settled that error cannot be assigned for failure to give instructions that were not asked. The portion of the charge excepted to may not have covered the whole case. It probably did not. But so far as given it contained no erroneous directions.

Shutte v. Thompson, 15 Wall. 151 (164). (December Term, 1872.)

65. Cases where record was imperfect as to evidence or exceptions.

Kearney v. Denn, 15 Wall. 51. (December Term, 1872).

Flanders v. Tweed, 15 Wall. 451. (December Term, 1872.)

66. Evidence or statements of fact not contained in the bill of exceptions, nor made a part thereof, though appended thereto, will not be regarded by the Supreme Court.

Bank v. Kennedy, 17 Wall. 19. (December Term, 1872.)

67. The Supreme Court in passing upon questions presented by the bill of exceptions will not look beyond the bill itself. The pleadings and the statements of the bill, the verdict and the judgment, are the only matters that are properly before it. Depositions, exhibits or certificates not contained in the bill, cannot be considered by the Supreme Court. The Supreme Court declares its intention to adhere to what is above presented as its practice; and declares that the case of *Flanders v. Tweed*, 9 Wall. 425 (Authority No. 105 under this Rule), was exceptional.

Reed v. Gardner, 17 Wall. 409. (October Term, 1873.)

68. When in a bill of exceptions the court below placed its action on its own rules (in this instance the pleas of the statute of limitations were not filed in time, according to the rules of the court below), with the construction of which, and the course of practice under them, it must be familiar, it would seem that the party assigning error should be bound to exhibit in his bill of exceptions so much of the rule or rules as affects the question.

Packet Co. v. Sickles, 19 Wall. 611 (616). (October Term, 1873.)

69. If either party in an action at law is desirous of preserving the evidence, either at the trial, or on a preliminary motion, in order to raise a question of law upon it, he must ask to have it incorporated in a bill of exceptions, which is the only way in which it can be done, unless the parties choose to make an agreed statement of facts. If neither mode be adopted, the Supreme Court is without means of knowing what evidence was introduced on either side.

Knapp v. Railroad Co., 20 Wall. 117 (121). (October Term, 1873.)

70. If a party assign no ground of exception to the admission of testimony the mere objection cannot avail him.

Burton v. Driggs, 20 Wall. 125 (133). (October Term, 1873.)

71. To be available in the Supreme Court an objection must have been taken in the court below. Unless so taken it will not be heard in the Supreme Court.

Mays v. Fritton, 20 Wall. 414 (418). (October Term, 1874.)

72. A party who complains of the rejection of evidence must show that he is injured by the rejection. His bill of exceptions must make it appear that if it had been admitted it might have led the jury to a different verdict. This must be understood as the practice of the Supreme Court, and such is the requirement of the twenty-first Rule.

Packet Co. v. Clough, 20 Wall. 528 (542). (October Term, 1874.)

[See same case under Subdivision 2, Clause 2, Rule 21.]

73. Whatever may be the rule elsewhere, to render an exception available in the Supreme Court it must affirmatively appear that the ruling ex-

cepted to affected or might have affected the decision of the case. If the exception is to the refusal of an interrogatory, not objectionable in form, the record must show that the answer related to a material matter involved; or if no answer was given, the record must show the offer of the party to prove by the witness particular facts, to which the interrogatory related, and that such facts were material, affirming *Packet Co. v. Clough*, 20 Wall. 528 (Authority No. 72 under this Rule).

Railroad Co. v. Smith, 21 Wall. 255 (261). (October Term, 1874.)

74. The bill of exceptions was silent upon the question whether there were any stamps of any kind or to what amount upon certain bonds. The Supreme Court refused to consider the point, stating that the fact must appear by the record as an existing fact in the case, and that if the objector wished the point to be passed upon by the appellate court, he must take care that the fact should sufficiently appear in the record.

Chambers County v. Clews, 21 Wall. 317 (324). (October Term, 1874.)

75. The established rule declared to be that the exception must show that it was taken and reserved by the party at the trial, but a bill of exceptions may be drawn out in form and signed or sealed by the judge at a later period. Citing *United States v. Breitling*, 20 How. 254 (Authority No. 43 under this Rule).

Stanton v. Embrey, Administrator, 93 U. S. 548 (555). (October Term, 1876.)

76. Errors apparent in the record, though not presented by a bill of exceptions, may be re-examined by a writ of error in an appellate tribunal; but alleged errors, not presented by a bill of exceptions, nor apparent on the face of the record, are not the proper subject of re-examination by a writ of error in the Supreme Court. The parties dissatisfied with a ruling must take care to raise the questions to be re-examined, and must see that the questions are made to appear in the record; for nothing is error in law, except what is apparent on the face of the record by bill of exceptions, or an agreed statement of facts, or in some one of the methods known to the practice of courts of error for the accomplishment of that object.

Storm v. United States, 94 U. S. 76 (81). (October Term, 1876.)

77. A bill of exceptions cannot be taken on a trial of a feigned issue directed by a court of equity, or if taken can only be used on a motion for a new trial.

Johnson v. Harmon, 94 U. S. 371. (October Term, 1876.)

78. There is but one mode of bringing up on the record and making a part of it the rulings of a judge during the progress of a trial, or his charge to the jury, and that is by a bill of exceptions allowed and sealed or signed by the judge. It is true that in the hurry of the trial, the bill is

not often reduced to form and sealed or signed. Generally an exception is only noted by the judge at the time claimed, and it is subsequently drawn up; but it is not a bill of exceptions until it has been sealed, or, as is now sufficient, signed. The sealing or signature of the judge is essential for its authentication; and it has been ruled that the judge's notes do not constitute a bill of exceptions. They are but memoranda from which a formal bill may afterwards be drawn up and sealed. Citing *Pomeroy's Lessee v. Bank of Indiana*, 1 Wall. 592 (Authority No. 13 under this Rule.) *Insurance Co. v. Lanier*, 95 U. S. 171. (October Term, 1877.)

79. The Supreme Court must have before it a bill of exceptions, or what is equivalent to such bill, or it cannot examine into any alleged errors, except such as are otherwise apparent on the face of the record.

Kerr v. Clappitt, 95 U. S. 188. (October Term, 1877.)

80. In a case where there were two suits between the same parties, the Supreme Court adverted to certain irregularities which appeared in the proceedings, saying: "Judgment was rendered in the first suit before the parties went to trial in the second, and yet the defendants were allowed to file eight bills of exceptions, which purport to be applicable to each of the two cases; and the judgment in each case is removed here by one writ of error, though the transcript does not show that the two cases were ever consolidated. Such proceedings are palpably irregular; but inasmuch as they are not the subject of objection by either party, the court has decided to exercise jurisdiction and dispose of the controversy. Separate judgments having been entered in the court of original jurisdiction, the judgment rendered here must be separately applied in the court below."

Brown v. Spofford, 95 U. S. 474 (484). (October Term, 1877.)

81. A paper entitled "case and exceptions," and which contained all the requisites of a bill of exceptions, except the name, was incorporated in the record, and had the sanction and signature of the judge; *Held*, To be a sufficient bill of exceptions.

Herbert v. Butler, 97 U. S. 319. (October Term, 1877.)

82. A bill of exceptions cannot be taken on the trial of a feigned issue directed by a court of equity, or if taken, can only be used on the motion for a new trial. Affirming *Johnson v. Harmon*, 94 U. S. 371 (Authority No. 77 under this Rule).

Watt v. Starke, 101 U. S. 247 (250). (October Term, 1879.)

83. Exceptions need only be noted at the time they are made, and may be reduced to form at a reasonable time after the trial is over, which time is in the discretion of the judge, and a defendant does not waive them by suing out a writ of error before the judge's signature is obtained. If signed during the term bills of exceptions need not be antedated, nor filed *nunc pro tunc*.

Hunnicut v. Peyton, 102 U.S. 333 (354.) (October Term, 1880.)

84. A case wherein the Supreme Court approves of *Dunlop v. Munroe*, 7 Cranch, 242 (270) (Authority No. 25 under this Rule). The bill of exceptions did not contain any of the evidence on the trial, but related to the charge; and the only questions arising on the bill of exceptions were those presented to the charge of the court to the jury. The Supreme Court said that, of course, evidence might be included in a bill of exceptions by appropriate reference to other parts of the record, and if that had been done in this case it might have been enough; but that, with no issue made directly by the pleadings, and no evidence set forth or referred to in the bill of exceptions showing the materiality of the charge complained of, the case presented to the Supreme Court only an abstract proposition of law which might or might not have been stated by the court below in a way to have been injurious to the plaintiffs in error, and that such a proposition they were not required to consider. Citing *Reed v. Gardner*, 17 Wall. 409 (Authority No. 67 under this Rule).

Jones v. Buckell, 104 U. S. 554 (556). (October Term, 1881.)

85. A case where the Supreme Court reviewed a case on a writ of error, and stated that to obviate any objection that it could not review the judgment in the case because there was no general verdict of the jury, and no special verdict in any form known to the common law, and no waiver in writing of a jury trial, and no such finding by the court below upon the facts as was provided for by sec. 649 of the Revised Statutes, the parties had filed in the Supreme Court a written stipulation agreeing "that the facts appearing from the special verdict and stated by the bill of exceptions to have been proved, shall be taken and considered as the facts in this case for all purposes, and as fully as if they had been specifically found by the Circuit Court;" and "that the Circuit Court submitted certain questions to the jury by agreement of the parties, and that the other facts were to be found and stated as shown by the bill of exceptions, and that upon the whole case as thus shown, judgment was to be pronounced by the court below, as they should determine the law."

Geekie v. Kirby Carpenter Co., 106 U. S. 379 (383). (October Term, 1882.)

86. A case which was tried by a jury, and where there was no written waiver of a jury, and where certain questions were propounded to the jury, who returned them with the answers thereto, as a special verdict, and where the judgment stated that it was rendered "upon the special verdict of the jury, and facts conceded or not disputed upon the trial." There was no general verdict and the evidence did not appear in the record. The Supreme Court, therefore, reversed the judgment, as it was not sustained by the special verdict.

Hodges v. Easton, 106 U. S. 408. (October Term, 1882.)

87. A case wherein the Supreme Court stated that the rule is well established and of long standing, that an exception, to be of any avail, must

be taken at the trial; that it may be reduced to form and signed afterwards, but the fact that it was seasonably taken must appear affirmatively in the record by a bill of exceptions duly allowed, or otherwise. The cases of *Phelps v. Mayer*, 15 How. 160 (Authority No. 10 under this Rule); *United States v. Breitling*, 20 How. 252 (Authority No. 43 under this Rule), and others, cited. In this case the language implied an exception only at the time of tendering the bill of exceptions to be signed, which was not only long after the trial, but at a subsequent term of the court; and the Supreme Court stated that even the liberal extension of the rule granted in *Simpson v. Dall*, 3 Wall. 460 (Authority No. 51 under this Rule), is not enough to reach this defect.

United States v. Carey, 110 U. S. 51. (January 7th, 1884.)

AUTHORITIES

RELATING TO THE MANNER OF REVIEW WHERE THE TRIAL IS BY THE COURT WITHOUT A JURY.

88. Where a cause is by consent not tried by a jury, the exception to the admission of evidence is not properly the subject of a bill of exceptions; but if the evidence was improperly admitted, the only effect would be, that the Supreme Court would reject that evidence, and proceed to decide the cause as if it were not in the record. The error would not, however, constitute of itself, any ground for the reversal of the judgment.

Field v. United States, 9 Pet. 182 (202). (January Term, 1835.)

89. A bill of exceptions is altogether unknown in chancery practice.

Ex parte Story, 12 Pet. 339 (343). (January Term, 1838.)

90. A case where counsel for the defendant in error insisted that the Supreme Court could not take cognizance of the cause for the reason that, it having been tried upon an agreed case, a writ of error could not lie to a decision thereof. The Supreme Court, however, after fully discussing the question raised, declared that they had no hesitancy in declaring that the point of practice raised by the defendants' counsel presented no objection to the regularity of the mode of bringing the case before them.

The United States v. Eliason, 16 Pet. 291 (301). (January Term, 1842.)

91. A bill of exceptions need not be taken when the court below decides both law and fact. The case then becomes like one of common law where a special verdict is found, or a case stated; in neither of which is there any necessity for a bill of exceptions.

United States v. King, 7 How. 833. (January Term, 1849.)

92. Although there is no distinction between suits at law and equity in the courts of Louisiana, yet the distinction must be observed in the courts of the United States. When a case is submitted to a judge to find the facts without a jury, he acts as referee, by consent of the parties, and no bill of exceptions will lie to his reception or rejection of testimony, nor to his

judgment on the law. If a party feels aggrieved, a case should be made up, stating the facts as found by the court, in the nature of a special verdict, and the judgment of the court thereon. If testimony has been received after objection, or overruled, as incompetent or irrelevant, it should be stated, so that the Supreme Court may judge whether it was competent, relevant, or material, in a just decision of the case. An exception to the admission of evidence is not properly the subject of a bill of exceptions. If improperly admitted, the Supreme Court would reject the evidence and proceed to decide the case as if it were not in the record.

Weems v. George, 13 How. 190 (197). (December Term, 1851.)

93. The State practice of Louisiana in appeals does not apply to writs of error from the Supreme Court to the Circuit Courts; hence there is no objection to the re-examination of the point of law presented in the bill of exceptions because other evidence had been given and was before the court, than what appeared in the bill of exceptions. If other evidence was deemed material it should have been brought into the record by the defendant in error. It must be assumed that the bill of exceptions contained all the testimony deemed material to raise the point of law involved. Where a trial by jury has been waived, the objection to the admission of improper evidence is not properly the subject of a bill of exceptions, but the contrary is the case where proper evidence is excluded.

Arthurs v. Hart, 17 How. 6 (15). (December Term, 1854.)

94. Where a case was tried in the Circuit Court of the United States in which both parties agreed that matters of law and fact should be submitted to the court, and it was brought to the Supreme Court upon a bill of exceptions which contained all the evidence, the Supreme Court held that they would remand the case to the Circuit Court with directions to award a *venire de novo*; that a bill of exceptions must present questions of law; that where there was no dispute upon the facts, counsel might agree on a case stated in the nature of a special verdict; but that to send all the evidence up was not the same thing as agreeing upon the facts.

Graham v. Bayne, 18 How. 60. (December Term, 1855.)

95. Where a trial by jury is waived in the court below, and there is no special verdict or agreed statement of facts, and no bill of exceptions upon a point of law, the Supreme Court cannot review the judgment of the court below.

Guild v. Frontin, 18 How. 135. (December Term, 1855.)

96. Where exceptions are not taken in the progress of the trial in the Circuit Court and do not appear on the record, there is no ground for the action of the Supreme Court.

Lathrop v. Judson, 19 How. 66. (December Term, 1856.)

97. The agreement of parties cannot authorize the Supreme Court to revise a judgment of an inferior court in any other mode of proceeding

than that which the law prescribes, nor can the laws of a State, regulating the proceedings of its own courts, authorize a District or Circuit Court sitting in the State to depart from the modes of proceeding and the rules prescribed by the acts of Congress; therefore, where the parties to an ejectment suit agreed to waive a trial by jury, and that both matters of law and of fact should be submitted to the decision of the court, and then a bill of exceptions was brought up to the Supreme Court to all the rulings and decisions of the court below, the Supreme Court *held* that it could not look into errors of fact, or errors of law, alleged to have been committed in such an irregular proceeding, and therefore affirmed the judgment of the court below.

Kelsey v. Forsyth, 21 How. 85. (December Term, 1858.)

98. A case was tried below at the April Term, 1856, by consent of parties, without the intervention of a jury. The presiding judge reported his findings of fact and his judgment thereon. Some six months afterwards, the defendants below made up a statement of facts (to which the plaintiff refused his assent), and presented it to the District Judge and demanded that he should seal a bill of exceptions. This the judge properly refused to do, but signed a bill of exceptions taken to his decision refusing to sign one. The Supreme Court stated that this novelty in practice required no further notice.

Martin v. Ihmsen, 21 How. 394 (396). (December Term, 1858.)

99. In this case the Supreme Court stated that it was very clear that a paper not signed by counsel, nor entered on the record of the court, nor made part of the record of the case by bill of exceptions, or in any other manner, cannot be considered by the Supreme Court as the foundation on which it is to affirm or reverse the case; that it was probable, from the language of the closing paragraph, that the parties considered it as an agreed statement of facts, on which the court below might decide the law, and on which the Supreme Court would review that decision, and stated that it was quite true that they had decided in the case of the *United States v. Eliason*, 16 Pet. 291 (Authority No. 90 under this Rule), and in several cases since, that this might be done; but that in order to bring such a case properly before the Supreme Court two things were essential which were wanting in this case, viz.: 1. The agreed statement of facts must, in some manner in the court below, be made a part of the record of the case; 2. The statement must be sufficient in itself, without inferences, or comparisons, or balancing of testimony, or weighing evidence, to justify the application of the legal principles which must determine the case. It must leave none of the functions of a jury to be discharged by the Supreme Court, but must have all the sufficiency, fulness, and perspicuity of a special verdict. If it requires of the court to weigh conflicting testimony, or to balance admitted facts, and deduce from these the propositions of fact on which alone a legal conclusion can rest, then it is not such a statement as the Supreme Court can act upon. The

paper was rejected by the Supreme Court as it "is evidence of facts, and not the facts themselves as agreed or found," and the Supreme Court stated that it was obvious that if the whole of the paper were presented by a jury as a special verdict, it would be objectionable, as presenting the evidence of facts, and not the facts themselves, which must determine the issue.

Burr v. Des Moines Co., 1 Wall. 99 (101). (December Term, 1863.)

100.—1. Unless an exception is reduced to writing and sealed by the judge, it is not a bill of exceptions within the meaning of the statute authorizing it, and it does not become part of the record, but the seal as required is to the bill of exceptions, and not to each particular exception, and it is sufficient if the bill of exceptions is sealed at the close.

2. The distinction between agreed statements of facts and special verdicts pointed out.

3. When the paper in the transcript is not a good bill of exceptions, agreed statement of facts, or a special verdict, the result is that it is not a part of the record, and, under the circumstances of the case, it must be wholly disregarded by the court in determining whether the judgment of the court below ought to be reversed or affirmed, and the general rule is that the judgment will be affirmed. Citing *Suydam v. Williamson*, 20 How. 441 (Authority No. 44 under this Rule); *Kelsey v. Forsyth*, 21 id. 85 (Authority No. 97 under this Rule); *Guild v. Frontin*, 18 id. 135 (Authority No. 95 under this Rule).

4. A party seeking, in a superior jurisdiction, a revision of the law applied to the case must take care to raise the questions of law to be revised, and put the facts on the record for the information of the appellate tribunal; and if he omits to do so in any of the methods known to the practice of such inferior courts, he must be content to abide the consequence of his neglect or oversight. Citing *Suydam v. Williamson*, 20 How. 433 (Authority No. 44 under this Rule).

Pomeroy's Lessee v. Bank of Indiana, 1 Wall. 592. (December Term, 1863.)

101. See *Norris v. Jackson*, 9 Wall. 125 (Authority No. 104 under this Rule), for the points decided in

Insurance Company v. Tweed, 7 Wall. 44. (December Term, 1868.)

102. A judgment affirmed in a case where the only ruling of the court to be found in the record was a judgment rendered in favor of a plaintiff for the recovery of a sum of money, where there was no question raised in the pleadings, no bill of exceptions, and no instructions or rulings of the court, and where what purported to be a statement of facts, signed by the judge, was filed more than two months after the writ of error was allowed and filed in the court, and nearly a month after the citation was issued.

Generes v. Bonnemer, 7 Wall. 564. (December Term, 1868.)

103. When there is no bill of exceptions judgment will be affirmed, not dismissed for want of jurisdiction.

James v. Bank, 7 Wall. 692. (December Term, 1868.)

104. In the trial of a cause by a judge without a jury, where the transcript, on its coming up, showed a long bill of exceptions, embracing all the evidence, which consisted of judgments, executions, deeds, depositions, admissions, and agreement of parties, at the close of which it was said that "the foregoing was all the cause, and the court thereupon found the issues and rendered judgment for the defendant, to which decision and ruling of the court, the plaintiff then and there excepted," the Supreme Court interpreting section 4 of ch. 86 of the Act of Congress of March 3d, 1865 (13 U. S. Stat. at Large, 501) (See Sec. 649 Revised Statutes, printed on page 14), and calling attention to the case of *Insurance Company v. Tweed*, 7 Wall. 44 (Authority No. 101 under this Rule), construed the said act as to the practice on a writ of error, on a trial by the court without a jury as follows :

1. If the verdict be a general verdict, only such rulings of the court, *in the progress of the trial*, can be reviewed as are presented by a bill of exceptions, or as may arise on the pleadings.
2. In such cases, a bill of exceptions cannot be used to bring up the whole testimony for review any more than in a trial by jury.
3. That if the parties desire a review of the law involved in the case, they must either get the court to make a special finding, which raises the legal propositions, or they must present to the court their propositions of law, and require the court to rule on them.
4. That objections to the admission or exclusion of evidence, or to such rulings on the propositions of law as the party may ask, must appear by bill of exceptions.

What is a special finding or verdict, and how reviewed, considered.

Norris v. Jackson, 9 Wall. 125 (128). (December Term, 1869.)

105. See also to similar effect as *Norris v. Jackson*, 9 Wall. 125 (Authority No. 104 under this Rule).

Flanders v. Tweed, 9 Wall. 425. (December Term, 1869.)

106. A case where the judgment was affirmed, the record containing no bill of exceptions, demurrer, or statement of facts.

Reilly v. Golding, 10 Wall. 56. (December Term, 1869.)

107. The Supreme Court will not review a general finding upon a mass of evidence brought up. If a party desires to have the finding reviewed, he must have the court find the facts specially. Affirming *Norris v. Jackson*, 9 Wall. 125 (Authority No. 104 under this Rule), and *Flanders v. Tweed*, id. 425 (Authority No. 105 under this Rule).

Coddington v. Richardson, 10 Wall. 516. (December Term, 1870.)

108.—1. Though the statute of Westminster requires bills of exceptions

to be *sealed*, yet as neither an act of Congress nor rule of court has made this requirement in the Supreme Court, it is sufficient if the bill be signed by the judge.

2. Judgment must be affirmed when the bill of exceptions does not purport to set forth all the evidence on either of the subjects to which the exception relates, and the judgment states that it was rendered for "reasons orally assigned," and these are not found in the record, as there is nothing on which error can be assigned.

Genes v. Campbell, 11 Wall. 193. (December Term, 1870.)

109. Where the facts were specially found by the court below, they are before the Supreme Court for examination as if they were embodied in the special verdict of a jury. The question presented for the consideration of the Supreme Court, as prescribed by the statute, is, whether they are sufficient to support the judgment. A bill of exceptions in such case is unnecessary, and it gives the facts no effect which they would not have had without it, and raises no question which would not have been as well presented if it had not been taken.

St. Louis v. The Ferry Company, 11 Wall. 423 (428). (December Term, 1870.)

110. The rules laid down in *Norris v. Jackson*, 9 Wall. 125 (Authority No. 104 under this Rule), and in *Flanders v. Tweed*, 9 Wall. 425 (Authority No. 105 under this Rule), respecting the mode of finding the facts by the court where a jury trial is waived, and the manner in which the records are to be prepared so as to be reviewed in the Supreme Court, considered and approved.

Kearney v. Case, 12 Wall. 275. (December Term, 1870.)

Miller v. Life Insurance Company, 12 Wall. 285. (December Term, 1870.)

111. In a case tried by the court without a jury, counsel filed a statement of facts proved in the case, after the judgment was rendered, which statement was signed by the counsel. The Supreme Court *held* that a statement of facts signed by counsel could not be noticed upon error; and that in this case, not only was the statement so signed, but it did not appear to have been made and filed until after the judgment; and further, that it had been often decided that the plaintiff in error could not take advantage of rulings upon exceptions in his own favor, even if erroneous.

Bethell v. Mathews, 13 Wall. 1. (December Term, 1871.)

112. In a case tried by the court below, a jury being waived, the Supreme Court *held* that sitting as a court of error, it could not pass, as it does in equity appeals, upon the weight or sufficiency of the evidence. There were no special findings of fact. Had there been a jury, the defendant might have called upon the court for instructions, and thus raised the questions of law which he deemed material. Or, had the law, which authorizes the waiver of a jury, allowed the parties to re-

quire a special finding of the facts, then the legal questions could have been raised and presented in the Supreme Court upon such findings as upon a special verdict. But, as the law stands, if a jury is waived and the court below chooses to find generally for one side or the other, the losing party has no redress on error, except for the wrongful admission or rejection of evidence.

Dirst v. Morris, 14 Wall. 484 (490). (December Term, 1871.)

113. In a case tried by the court without a jury, the Supreme Court held that although the finding was general, any rulings of the court in the progress of the trial, if excepted to at the time and duly presented by bills of exceptions, may be reviewed by the Supreme court; but that manifestly, the rulings thus subject to review are decisions of law, not findings of fact; that some requests submitted to the court to find certain facts were no more the subject of exception and review than would be a request to a jury to find in a particular manner, and a refusal by the jury so to find.

Dickinson v. The Planters' Bank, 16 Wall. 250 (258). (December Term, 1872.)

114. The doctrine reasserted [and *Miller v. Life Insurance Company*, 12 Wall. 297 (Authority No. 110 under this Rule); *Norris v. Jackson*, 9 id. 125 (Authority No. 104 under this Rule), and *Coddington v. Richardson*, 10 id. 516 (Authority No. 107 under this Rule), and other cases cited with approval], that where a case is tried by the Circuit Court under the Act of March 3d, 1865, 13 U. S. Stat. at Large, 501 (See sec. 649 Revised Statutes, printed on page 14), if the finding be a general one, the Supreme Court will only review questions of law arising in the progress of the trial and duly presented by a bill of exceptions, or errors of law apparent on the face of the pleadings.

Insurance Company v. Folsom, 18 Wall. 237. (October Term, 1873.)

115. To same effect as *Insurance Company v. Folsom*, 18 Wall. 237 (Authority No. 114 under this Rule), are *Town of Ohio v. Marcy*, 18 Wall. 552; *Cooper v. Omohundro*, 19 Wall. 65; *Crews v. Brewer*, 19 Wall. 70. (October Term, 1873.)

116. Cases of *Flanders v. Tweed*, 9 Wall. 430 (Authority No. 105 under this Rule), and *Norris v. Jackson*, id. 125 (Authority 104 under this Rule), approved. Exceptions to be of any avail must present distinctly and specifically the ruling objected to. A case ought not to be left in such a condition after the trial that the defeated party may hunt through the records, and, if he finds an unsuspected error, attach it to a general exception and thus obtain a reversal of the judgment upon a point that may never have been called to the attention of the court below.

Insurance Company v. Sea, 21 Wall. 158. (October Term, 1874.)

117. A case where the Supreme Court stated that it perhaps sufficiently

appeared from the bill of exceptions in the case, if it was to be taken as a part of the record, that the rulings complained of were excepted to in proper form at the time of the trial; but that it did not appear that the bill of exceptions was filed, signed, tendered for signature, or even prepared, before the adjournment of the court for the term at which the judgment was rendered; that no notice was given to the plaintiff of any intention on the part of the defendants to ask for the allowance of a bill of exceptions, either during the term or after; that no application was made to the court for an extension of time for that purpose, and that no such extension was granted, and no consent given; that upon the adjournment for the term, the parties were out of court, and the litigation there was at an end; and that the order of the court made at the next term, directing that the bill of exceptions be filed in the cause as of the date of the trial, was a nullity.

The Supreme Court referred in this case to the case of the *United States v. Breitling*, 20 How. 252 (Authority No. 43 under this Rule), and stated that this case differed very materially from that; that in that case the particular grounds of the rulings were not stated; but that it was probably for the reason, that, upon the facts stated, the consent to further time beyond the term for the settling of the exceptions might be fairly presumed: and that that case went to the extreme verge of the law on this question of practice, and that the Supreme Court were not inclined to extend its operations. The case of *Generes v. Bonnemer*, 7 Wall. 564 (Authority No. 102 under this Rule), and *Flanders v. Tweed*, 9 Wall. 425 (Authority No. 105 under this Rule), cited and approved.

Müller v. Ehlers, 91 U. S. 249 (250). (October Term, 1875.)

118. In chancery cases, or in any other class of cases where all the evidence becomes part of the record in the highest court of the State, the same record being brought to the Supreme Court, it can review the decision of the State court on both the law and the fact, so far as may be necessary to determine the validity of the right set up under the act of Congress; but in cases where the facts are submitted to a jury, and are passed upon by the verdict, in a common-law action, the Supreme Court has the same inability to review those facts in a case coming from a State court that it has in a case coming from a Circuit Court of the United States.

River Bridge Co. v. Kansas Pacific Railway Co., 92 U. S. 315 (317). (October Term, 1875.)

119. Exceptions may be taken to the rulings of the court *made in the progress of the trial*, and, if duly taken at the time, the rulings may be reviewed in the Supreme Court, provided the questions are properly presented by a bill of exceptions. Where a jury is waived, and the issues of fact are submitted to the court, the finding of the court may be either general or special, as in cases where the issues of fact are tried by a jury; but, where the finding is general, the parties are concluded by the determina-

tion of the court, subject to the right to bring error to review any rulings of the court to which due exception was taken during the trial.

Where a case is submitted to the court for trial without the intervention of a jury, findings may be general or special; but if special, the finding must not be a mere report of the evidence, leaving the conclusions of fact to be adjudged by the appellate tribunal, as that course is forbidden by the repeated decisions of the Supreme Court. Instead of that, the requirement is that the Circuit Court shall state the ultimate facts, or the propositions of fact, which the evidence establishes, and not the evidence from which these ultimate facts, or propositions of fact, are derived. Such findings are intended by Congress as a proper substitute for the special verdict of a jury; and it is settled law, that it is the very essence of a special verdict that the jury shall find the facts on which the court is to pronounce the judgment, according to law; that, in order to enable the appellate court to act upon a special verdict, the jury must find the facts, and not merely state the evidence of facts; and the rule is, that when the jury states the evidence merely, without stating the conclusions of the jury, a court of error cannot act upon matters so found. Citing *Norris v. Jackson*, 9 Wall. 127 (Authority No. 104 under this Rule), and *Suydam v. Williamson*, 20 How. 432 (Authority No. 44 under this Rule).

Tyng v. Grinnell, Collector, 92 U. S. 467 (472). (October Term, 1875.)

120. Where bills of exceptions are necessary to bring any matter upon record so that it can be reviewed in error, it must appear by the record that the exception was taken at the trial. A judge cannot afterward allow one not taken in time.

. *Insurance Co. v. Boon*, 95 U. S. 117 (127). (October Term, 1877.)

121. Under the Act of February 16th, 1875, 18 Stat. at Large, 315 (See same printed on page 17), the Supreme Court holds that in an admiralty case the finding of facts in the Circuit Court is conclusive; and that the only rulings which can be presented for review in the Supreme Court by a bill of exceptions, are those made upon questions of law. And it further states that under the Act of Congress of March 3d, 1865, 13 Stat. at Large, 501 (See sec. 649 Revised Statutes, printed on page 14), the Supreme Court have universally held that a bill of exceptions cannot be used to bring up the evidence for review of the findings of fact, but that those as found and stated by the court below are conclusive, and that the case stands in the Supreme Court precisely the same as though the facts had been found by a verdict of a jury.

The "Abbotsford", 98 U. S. 440. (October Term, 1878.)

122. Rulings in "*The Abbotsford*," 98 U. S. 440 (Authority No. 121 under this Rule), reaffirmed.

The "Benefactor", 102 U. S. 214. (October Term, 1880.)

123. A case where, after it had been called for trial and the jury sworn,

a juror was, "by consent of the parties" withdrawn, and the case referred to a referee under the practice of the courts of the State embraced within the jurisdiction of the Circuit Court to which the writ of error was taken. The whole case turned on the exception to the overruling of the objections to a referee's report. The exception was a general one, to the single order overruling the twenty-two specific objections as a whole. The Supreme Court stated that it has uniformly held that "if a series of propositions is embodied in the instructions (to the jury), and the instructions are excepted to in a mass, if any one of the propositions is correct the exception must be overruled;" and that the same rule should be applied to cases of this kind; that in this case there were a series of propositions in respect to the report of the referee, and that they were overruled and excepted to in a mass; and that if one of the propositions were correct, the exception would not be good; and that the party should, by his exception, direct the attention of the court to the specific proposition or propositions on which he relies, and separate it or them from the rest.

Bogher v. Insurance Co., 103 U. S. 90 (97). (October Term, 1880.)

124. A stipulation in writing, signed by the attorneys for the respective parties, submitting the cause to the court for trial on agreed facts, held to be a sufficient waiver of a trial by jury to meet the requirements of sec. 649 of the Revised Statutes (See same printed on page 14), and also held that even before the Act of 1875, ch. 86, sec. 4, 13 Stat. at Large, 501 [reproduced in secs. 649, 700, Revised Statutes, printed at pp. 14, 15], it was always held that a judgment upon agreed facts spread at large on the record could be reviewed by the Supreme Court on a writ of error; and that such a statement is considered to be equivalent to a special verdict, and to present questions of law alone for the consideration of the Supreme Court.

Supervisors v. Kennicott, 103 U. S. 554. (October Term, 1880.)

125. A bill of exceptions is not necessary to give the Supreme Court jurisdiction of an appeal in admiralty under the provisions of the Act of February 16th, 1875, ch. 77, 18 Stat. at Large, 315 (See same printed at page 17). That act expressly provides that the review by the Supreme Court shall extend to the determination of the questions of law arising upon the record, and to such rulings of the court, excepted to at the time, as may be presented by a bill of exceptions, prepared as in actions at law. At law a bill of exceptions is only used to put into the record that which would not appear without. The findings which the statute requires must be stated by the court. These, therefore, become part of the record without any action of the parties, and errors of law arising on them need not be presented by exceptions. They are in the nature of a special verdict, as to which the inquiry is always open in the reviewing court, whether, when taken in connection with everything else that appears, it is sufficient to support the judgment.

The "S. C. Tryon," 105 U. S. 267 (270). (October Term, 1881.)

126. An admiralty appeal where the Supreme Court stated that they had no hesitancy in saying that the manner in which the bill of exceptions was prepared, was not a proper way of preparing a bill of exceptions to present to the Supreme Court for review rulings of the Circuit Court, such as were then complained of; that a bill of exceptions must be "prepared as in actions at law," where it is used, "not to draw the whole matter into examination again," but only separate and distinct points, and those of law; that every bill of exceptions must state and point out distinctly the errors of which complaint is made; that it ought also to show the grounds relied on to sustain the objection presented, so that it may appear the court below was properly informed as to the point to be decided; that it was needless to say that the bill of exceptions under consideration met none of these requirements; that from everything which was therein presented no judge would be presumed to understand that the specific objection made to any one of his findings was that no evidence whatever had been introduced to prove it, or to one of his refusals, that the fact refused was material and had been conclusively shown by uncontradicted testimony, and that no ground whatever was stated for any one of all the exceptions that had been taken. What bills of exceptions should contain is stated fully in the opinion.

The "Francis Wright," 105 U. S. 381 (389). (October Term, 1881.)

127. A case which was tried and determined by the court without the intervention of a jury, but the record did not show any stipulation in writing waiving a jury. The Supreme Court affirmed the judgment, stating that the rule was well settled, that if a written stipulation waiving a jury was not in some way shown affirmatively in the record, none of the questions decided at the trial could be re-examined upon a writ of error. [See cases cited in opinion on the same point.]

County of Madison v. Warren, 106 U. S. 622. (October Term, 1882.)

County of Alexander v. Kimball, 106 U. S. 623. (October Term, 1882.)

128. An admiralty appeal which came up before the Supreme Court with the finding of facts upon which the decree was rendered. The Supreme Court stated that in cases of admiralty or maritime jurisdiction, on the instance side of the court, under the act of Congress of Feb. 16, 1875, ch. 77, 18 Stat. at Large, 315 (See same printed at page 17), the finding has the effect of a special verdict in an action at law; that it was true, a bill of exceptions was in the record, but it contained exceptions only to the findings, and to the refusal of the court to find otherwise, and that it presented no question for their consideration, except such as arose upon the facts as found; and that there is no occasion in any case to except specially to a finding, as its sufficiency, in connection with the pleadings, to support the decree rendered, is always open to consideration on appeal.

The "Adriatic," 107 U. S. 512. (October Term, 1882.)

Rule 5.

PROCESS.

1. All process of this court shall be in the name of the President of the United States.

HISTORY.

With the exception of some immaterial verbal changes, and with the omission of the words "unless and until it shall otherwise be provided by law," which preceded the words "All process," in Original General Rule 5, this Clause is in the same language as Original General Rule 5, adopted February 5th, 1790 (given as Original General Rule 4 in 2 Dallas, 400), 1 Cranch, xvi.; 1 Wheat. xiv.; 1 Pet. vi.; and 1 How. xxiv., and is in precisely the same language as the first Clause of General Rule 5 of the General Rules as revised and corrected at December Term, 1858, 21 How. vi., and of Rule 5 of the Revision of May 1, 1871. For this Clause in the Revision of 1884, see 108 U. S. 574.

THE CONSTITUTION.

"In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations, as the Congress shall make."

Article 3, section 2.

FEDERAL STATUTES.

"Sec. 687. The Supreme Court shall have exclusive jurisdiction of all controversies of a civil nature where a State is a party, except between a State and its citizens, or between a State and citizens of other States, or aliens, in which latter cases it shall have original, but not exclusive, jurisdiction. And it shall have exclusively all such jurisdiction of suits or proceedings against ambassadors, or other public ministers, or their domestics, or domestic servants, as a court of law can have consistently with the law of nations; and original, but not exclusive, jurisdiction of all suits brought by ambassadors, or other public ministers, or in which a consul or vice-consul is a party."

Revised Statutes (Second Edition), § 687, p. 127; Act of Congress of 24th September, 1789, ch. 20, sec. 13, 1 Stat. at Large, 80.

"Sec. 716. The Supreme Court and the circuit court and district courts shall have power to issue writs of *scire facias*. They shall

also have power to issue all writs not specifically provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the usages and principles of law.”

Revised Statutes (Second Edition), § 716, p. 136; Act of Congress of 24th September, 1789, ch. 20, sec. 14, 1 Stat. at Large, 81; Act of Congress of 2d March, 1793, ch. 22, sec. 5, 1 Stat. at Large, 334.

“Sec. 911. All writs and processes issuing from the courts of the United States shall be under the seal of the court from which they issue, and shall be signed by the clerk thereof. Those issuing from the Supreme Court or a circuit court shall bear teste of the Chief Justice of the United States, or, when that office is vacant, of the associate justice next in precedence, and those issuing from a district court shall bear teste of the judge, or, when that office is vacant, of the clerk thereof. The seals of said courts shall be provided at the expense of the United States.”

Revised Statutes (Second Edition), § 911, p. 174; Act of Congress of 8th May, 1792, ch. 36, sec. 1, 1 Stat. at Large, 275.

[NOTE.—It may be of interest to insert here an Original Rule of the Supreme Court, numbered 1, and adopted at February Term, 1790, 2 Dallas, 399.

“*Ordered*, That the Seal of the Court shall be the Arms of the United States, engraved on a piece of steel of the size of a dollar, with these words in the margin: ‘The Seal of the Supreme Court of the United States,’ and that the seals of the Circuit Courts shall be the Arms of the United States, engraven on circular pieces of silver of the size of 1-2 dollar, with these words in the margin, viz., in the upper part, ‘The Seal of the Circuit Court;’ and in the lower part, the name of the district for which it is intended.”

This Rule was made under the authority of the Act of Congress of September 29th, 1789, ch. 21, sec. 1, 1 Stat. at Large, 93, which enacted that the seals of the Supreme and Circuit Courts should be provided by the Supreme Court, and those of the District Courts by the respective judges of the same. This section is not re-enacted in the Revised Statutes, the Act having been in force only until the end of the then next session of Congress, which ended August 12th, 1790, and having been, by the Act of Congress of May 26th, 1790, ch. 13, 1 Stat. at Large, 123, continued in force until the end of the then next session of Congress, which ended March 3d, 1791, and having been by the Act of Congress of February 18th, 1791, ch. 8, 1 Stat. at Large, 191, continued in force until the end of the then next session of Congress, which ended May 9th, 1792, and the last named Act having been repealed by the Act of Congress of May 8th, 1792, ch. 36, sec. 8, 1 Stat. at Large, 278, sec. 1 of which (now sec. 911 of the Revised Statutes, Second Edition, 174), enacted that the seals of the Supreme Court and of the Circuit and District Courts should be provided at the expense of the United States.]

"Sec. 912. All process issued from the courts of the United States shall bear teste from the day of such issue."

Revised Statutes (Second Edition), § 912, p. 174; Act of Congress of 1st June, 1872, ch. 255, sec. 4, 17 Stat. at Large, 197.

"Sec. 1004. Writs of error returnable to the Supreme Court may be issued as well by the clerks of the circuit Courts, under the seals thereof, as by the clerk of the Supreme court. When so issued they shall be, as nearly as each case may admit, agreeable to the form of a writ of error transmitted to the clerks of the several circuit courts by the clerk of the Supreme Court, in pursuance of section nine of the Act of May eighth, seventeen hundred and ninety-two, chapter thirty-six."

Revised Statutes (Second Edition), § 1004, p. 188.

"Sec. 9. *And be it further enacted*, That it shall be the duty of the clerk of the supreme court of the United States, forthwith to transmit to the clerks of the several circuit courts the form of a writ of error, to be approved by any two of the judges of the supreme court, and it shall be lawful for the clerks of the said circuit courts to issue writs of error agreeably to such forms, as nearly as the case may admit, under the seal of the said circuit courts, returnable to the supreme court, in the same manner as the clerk of the supreme court may issue such writs, in pursuance of the Act, entitled 'An act to establish the judicial courts of the United States.'"

Act of Congress of 8th May, 1792, ch. 36, sec. 9, 1 Stat. at Large, 278.

"Sec. 4063. Whenever any writ or process is sued out or prosecuted by any person in any court of the United States, or of a State, or by any judge or justice, whereby the person of any public minister of any foreign prince or state, authorized and received as such by the President, or any domestic or domestic servant of any such minister, is arrested or imprisoned, or his goods or chattels are distrained, seized, or attached, such writ or process shall be deemed void."

Revised Statutes (Second Edition), § 4063, p. 783; Act of Congress of 30th April, 1790, ch. 9, sec. 25, 1 Stat. at Large, 117.

"Sec. 4064. Whenever any writ or process is sued out in violation of the preceding section, every person by whom the same is obtained or prosecuted, whether as a party or as attorney or solicitor, and every officer concerned in executing it, shall be deemed a violator of the laws of nations, and a disturber of the public repose, and shall be imprisoned for not more than three years, and fined at the discretion of the court."

Revised Statutes (Second Edition), § 4064, p. 784; Act of Congress of 30th April, 1790, ch. 9, sec. 26, 1 Stat. at Large, 118.

“Sec. 4065. The two preceding sections shall not apply to any case where the person against whom the process is issued is a citizen or inhabitant of the United States, in the service of a public minister, and the process is founded upon a debt contracted before he entered upon such service; nor shall the preceding section apply to any case where the person against whom the process is issued is a domestic servant of a public minister, unless the name of the servant has, before the issuing thereof, been registered in the Department of State, and transmitted by the Secretary of State to the marshal of the District of Columbia, who shall upon receipt thereof post the same in some public place in his office.”

Revised Statutes (Second Edition), § 4065, p. 784; Act of Congress of 30th April, 1790, ch. 9, sec. 27, 1 Stat. at Large, 118.

“Sec. 5394. Every person who feloniously steals, takes away, alters, falsifies, or otherwise avoids any record, writ, process, or other proceeding, in any court of the United States, by means whereof any judgment is reversed, made void, or does not take effect, and every person who acknowledges, or procures to be acknowledged, in any such court, any recognizance, bail, or judgment, in the name of any other person not privy or consenting to the same, shall be fined not more than five thousand dollars or be imprisoned at hard labor not more than seven years; but this provision shall not extend to the acknowledgment of any judgment by an attorney, duly admitted for any person against whom any such judgment is had or given.”

Revised Statutes (Second Edition), § 5394, p. 1045; Act of Congress of 30th April, 1790, ch. 9, sec. 15, 1 Stat. at Large, 115.

AUTHORITIES.

1. Congress has passed no act for the special purpose of prescribing the mode of proceeding in suits instituted against a State, nor in any suit in which the Supreme Court is to exercise the original jurisdiction conferred by the Constitution.

It has been settled, on great deliberation, that the Supreme Court may exercise its original jurisdiction in suits against a State, under the authority conferred by the Constitution and existing Acts of Congress. The rule respecting the process, the persons on whom it is to be served, and the time of service, is fixed. The course of the Court, after due service of process, has also been prescribed.

State of New Jersey v. State of New York, 5 Pet. 284. (January Term, 1831.)

[See same case under Clauses 2 and 3, Rule 5.]

2. A case where a so-called writ of error was signed by the clerk and bore the seal of the Supreme Court of Louisiana, and was issued in the

name of and bore the *teste* of the Chief Justice of said Supreme Court. The Supreme Court of the United States *held* that it had no jurisdiction of the case, as no writ of error had ever been issued. Reference is made to the ninth section of the Act of May, 8th, 1792, ch. 36 (1 Stat. at Large, 278), and to sec. 1004 and 1005 of the Revised Statutes, and, after reviewing the characteristics of the writ, the Supreme Court stated that it had not a single requisite of a writ of the Supreme Court of the United States, and that as there was nothing which even purported to be a writ from the Supreme Court, there was nothing to amend, and that if they should permit the parties to change the seal, or the title, or to do everything else in the way of amendments which § 1005 of the Revised Statutes allowed, there would still be no writ, for nothing was done either in the name of the President or under the authority of the United States.

Bondurant, Tutrix, v. Watson, 103 U. S. 278 (280). (October Term, 1880.)

[See this case under Clause 5, Rule 8, and for § 1005 of the Revised Statutes, see the same Clause.]

3. A motion by plaintiff in error for leave to amend the writ of error. The defendant in error moved to dismiss the case for want of a sufficient writ of error, and with this motion was united a motion to affirm under Clause 5 of Rule 6. The writ was in every respect in accordance with the form transmitted by the Clerk of the Supreme Court to the Clerks of the Circuit Courts, under the authority of the Act of Congress of May 8th, 1792, ch. 36, sec. 9, now § 1004, Revised Statutes (see same at page 49), except that it was made returnable on a wrong day, bore the *teste* of the Chief Justice of the Supreme Court of Texas, was signed by the chief justice and the clerk, and sealed with the seal of that court; it commanded the Justices of the Supreme Court of Texas, in the name of the President of the United States, to transmit to the Supreme Court of the United States for review, their record and proceedings in a certain suit which was properly described, and the return was made and the cause duly docketed in the Supreme Court of the United States. The Supreme Court thought that all the defects complained of were such as came within the remedial provisions of the statute, and the amendments asked for were allowed to be made, save only that the seal and the signature of the clerk of the Supreme Court, instead of the Circuit Court of the Western District of Texas, were allowed to be affixed to the writ; if made by a certain time named, the motion to dismiss was to be denied, otherwise granted. The case of *Bondurant, Tutrix, v. Watson*, 103 U. S. 278 (Authority No. 2 under this Clause of Rule 5), distinguished. The motion to affirm was overruled.

The Texas Pacific Railway Co. v. Kirk, 111 U. S. 486. (April 21st, 1884.)

[See same case under Clause 5, Rule 6.]

2. When process at common law or in equity shall issue against a State, the same shall be served on the governor, or chief executive magistrate, and attorney-general of such State.

HISTORY.

This Clause, with the exception of some immaterial verbal changes, is in the same language as an Original General Rule without number adopted August 12th, 1796, and to be found in 3 Dallas, 335, and 3 Pet. xvii., where the reporter in a note states that this, with two other Rules, were omitted in 1 Wheat. and 1 Peters, from the fact that they were not regularly entered, with the other rules of Court, by the then clerk of the court, at the time of their adoption. This Original General Rule of August 12th, 1796, appears as the first subdivision of Original General Rule 10, 1 How. xxiv., and in the decisions prior to 21 Howard is referred to, notably in 17 How. 1, as Rule 10. This Clause is in precisely the same language as the second subdivision of General Rule 5 of the General Rules as revised and corrected at December Term, 1858, 21 How. vi., and of the Revision of May 1st, 1871. For this Clause in the Revision of 1884, see 108 U. S. 574.

AUTHORITIES.

1. The Original General Rule adopted August 12th, 1796, and above referred to, was, as matter of fact, adopted to meet a question raised in a case before the Court, and the Rule, with the views of the Supreme Court respecting the same, will be found in

Grayson v. State of Virginia, 3 Dallas, 320. (August Term, 1796.)

2. Where a copy of a subpoena was delivered to the Attorney-General, and a copy left at the Governor's house, where the original had likewise been shown to the Secretary of the State, the Court deemed the service under the circumstances to be sufficient in strictness of construction as well as upon principle.

Huger v. State of South Carolina, 3 Dallas, 339. (February Term, 1797.)

[See same case under Clause 3, Rule 5.]

3. Service on the Governor or on the Attorney-General, but not on both: *Held*, not to be sufficient.

State of New Jersey v. State of New York, 3 Pet. 461. (January Term, 1830.)

[See same case under Clause 3, Rule 5.]

4. In a suit in the Supreme Court instituted by a State against another State of the Union, the service of the process of the Court on the Governor and Attorney-General of the State, sixty days before the return day of the process, is a sufficient service.

State of New Jersey v. State of New York, 5 Pet. 284. (January Term, 1831.)

[See same case under Clauses 1 and 3, Rule 5.]

5. In an action begun by the Treasurer of the State of Louisiana to recover certain taxes alleged to be due from the plaintiffs in error, who were defeated in the suit, and brought a writ of error to the Supreme Court, the citation was served on the Treasurer of Louisiana. On a motion to dismiss the writ of error on the ground that the State was the real party to the suit, and that the citation ought to have been served on the chief executive magistrate and attorney-general of the State under the rule of the Supreme Court : *Held*, That the rule applies in those cases only in which the State is a party on the record, and that the rule is intended to point out the officers who shall be held to represent the State when process is issued against it, so far as the service of process is concerned ; that the only mode in which a State can be cited to appear, is by serving the process on some one or more of its officers, and that those named in the Rule were considered by the Court to be its appropriate representatives, in a summons or citation to appear in the Supreme Court. The service of the citation in this case on the Treasurer was *held* to be sufficient, as it must be directed to the party on the record and served on him, and when an officer of the State prosecutes *eo nomine* for the State, process must be served on him.

Poydras de la Lande v. The Treasurer of Louisiana, 17 How. 1. (December Term, 1854.)

6. Cases of original jurisdiction where process was ordered to issue against the State defendant.

State of Rhode Island v. State of Massachusetts, 7 Pet. 651. (January Term, 1833.)

State of Florida v. State of Georgia, 11 How. 293. (December Term, 1850.)

3. Process of subpoena, issuing out of this court, in any suit in equity, shall be served on the defendant sixty days before the return-day of the said process ; and if the defendant, on such service of the subpoena, shall not appear at the return-day, the complainant shall be at liberty to proceed *ex parte*.

HISTORY.

With the exception of some immaterial verbal alterations, the principal one being the omission in the present Clause of the words " contained therein " after the last words " return-day," this Clause does not differ from Original General Rule 10, adopted August 12th, 1796, 3 Dallas, 335 ;

1 Cranch, xvii. ; 1 Wheat. xv. ; 1 Pet. vi. ; nor from the second subdivision of Original General Rule 10, as given in 1 How. xxv. ; nor from the third clause of General Rule 5 of the General Rules as revised and corrected at December Term, 1858, 21 How. vi., and of the Revision of May 1st, 1871. For this Clause in the Revision of 1884, see 108 U. S. 574.

AUTHORITIES.

1. When process had been served upon a State, proclamation was made "that any person having authority to appear for the State of New York, is required to appear accordingly," and no person appearing, it was, on motion, ordered "that unless the State appears by the first day of next term to the above suit, or show cause to the contrary, judgment will be entered by default against the said State."

Oswald, Administrator, v. State of New York, 2 Dallas, 401, 402 and 415. (February and August Terms, 1792, and February Term, 1793.)

2. A case of original jurisdiction, where the following Order was made by the Supreme Court :

"Ordered, That the plaintiff in this cause do file his declaration on or before the first day of March next.

"Ordered, That certified copies of the said declaration be served on the Governor and Attorney-General of the State of Georgia, on or before the first day of June next.

"Ordered, That unless the said State shall either in due form appear, or show cause to the contrary in this Court, by the first day of next Term, judgment by default shall be entered against the said State."

Chisholm, Ex'r, v. State of Georgia, 2 Dallas, 419 (480). (February Term, 1793.)

3. The subpoena having been properly served, the complainant was declared to be entitled to proceed *ex parte*, there being no appearance of the defendant.

Huger v. State of South Carolina, 3 Dallas, 339. (February Term, 1797.)
[See same case under Clause 2, Rule 5.]

4. As the State of Connecticut did not appear, a motion was made that she should appear on the first day of next term, or that the plaintiff be then at liberty to proceed *ex parte*; but it was observed, that the rule required that a subpoena issuing in a suit in equity, should be served sixty days before the return, which had not been done in the present case. The first motion was, thereupon, waived, and an *alias subpoena* awarded.

State of New York v. State of Connecticut, 4 Dallas, 6. (August Term, 1799.)

5. Service of process being held defective, as it was not served sixty

days before the return-day thereof, as required by the Rules of the Supreme Court, an *alias subpœna* was awarded.

State of New Jersey v. State of New York, 3 Pet. 461 (467). (January Term, 1830.)

[See same case under Clause 2, Rule 5.]

6. After due service of the subpœna, the State which is a complainant has a right to proceed *ex parte* in a suit against a State, and if, after the service of an order of the Court for the hearing of the case, there shall not be an appearance, the Court will proceed to a final hearing.

State of New Jersey v. State of New York, 5 Pet. 284. (January Term, 1831.)

[See same case under Clauses 1 and 2, Rule 5.]

7. The practice declared to be well settled that, in suits against a State, if the State shall neglect to appear, on due service of process, no coercive measures will be taken to compel appearance, but the complainant will be allowed to proceed *ex parte*.

State of Massachusetts v. State of Rhode Island, 12 Pet. 755. (January Term, 1838.)

ORIGINAL JURISDICTION.

For cases relating to Original Jurisdiction of the Supreme Court, see Rule 3, and in addition to the authorities there cited, see also the following :

a. Where original jurisdiction was exercised, or where it was held that it could be exercised.

State of Missouri v. State of Iowa, 7 How. 666. (January Term, 1849.)

State of Pennsylvania v. The Wheeling and Belmont Bridge Co., 18 How. 421, 460. (December Term, 1855.)

Texas v. White, 7 Wall. 700. (December Term, 1868.)

Texas v. Hardenberg, 10 Wall. 68. (December Term, 1869.)

State of Florida v. Anderson, 91 U. S. 667. (October Term, 1875.)

Wisconsin v. Duluth, 96 U. S. 379. (October Term, 1877.)

Rule 6.**MOTIONS.**

1. All motions to the court shall be reduced to writing, and shall contain a brief statement of the facts and objects of the motion.

HISTORY.

This Clause, with the exception of some immaterial verbal changes, is in the same language as Original General Rule 51, adopted in 1838, and given under that number in 12 Pet. viii., and as Original General Rule 46 in 1 How. xxxvii., and as General Rule 6 of the General Rules, as revised and corrected at December Term, 1858, 21 How. vi., and as the first Clause of Rule 6 of the Revision of May 1st, 1871. For this Clause in the Revision of 1884, see 108 U. S. 574.

2. One hour on each side shall be allowed to the argument of a motion, and no more, without special leave of the court, granted before the argument begins.

HISTORY.

This Clause is *totidem verbis* the same as the amendment, promulgated December 18th, 1876, which added the language of this Clause at the end of Section 1 of General Rule 6 of the General Rules adopted at the Revision of May 1st, 1871, and then in force, 93 U. S. vii. For this Clause in the Revision of 1884, see 108 U. S. 575.

3. No motion to dismiss, except on special assignment by the court, shall be heard, unless previous notice has been given to the adverse party, or the counsel or attorney of such party.

HISTORY.

This Clause is *totidem verbis* the same as the last three lines of General Rule 31, promulgated at December Term, 1867, 6 Wall. v., and as the second Clause of General Rule 6 of the Revision of May 1st, 1871. For this Clause in the Revision of 1884, see 108 U. S. 575.

AUTHORITIES.

1. The Supreme Court set aside an order granting a motion to dismiss an appeal as having been improvidently granted, stating that the notice of motion was insufficient and irregular, as it designated no time for the hearing, and that it was evident also, that counsel for the complainant, who prosecuted as a representative creditor, supposed, as he properly might, that he would have further information of the time when the motion would be called up.

Glenny v. Langdon, 94 U. S. 604. (October Term, 1876.)

4. All motions to dismiss writs of error and appeals, except motions to docket and dismiss under Rule 9, must be submitted in the first instance on printed briefs or arguments. If the court desires further argument on that subject, it will be ordered in connection with the hearing on the merits. The party moving to dismiss shall serve notice of the motion, with a copy of his brief or argument, on the counsel for plaintiff in error or appellant of record in this court, at least three weeks before the time fixed for submitting the motion, in all cases except where the counsel to be notified resides west of the Rocky Mountains, in which case the notice shall be at least thirty days. Affidavits of the deposit in the mail of the notice and brief to the proper address of the counsel to be served, duly post-paid, at such time as to reach him by due course of mail, the three weeks or thirty days before the time fixed by the notice, will be regarded as *prima facie* evidence of service on counsel who reside without the District of Columbia. On proof of such service, the motion will be considered, unless, for satisfactory reasons, further time be given by the court to either party.

HISTORY.

With the exception of some immaterial verbal changes this Clause is in the same language as the amendment to General Rule 6 of the Revision of May 1st, 1871, promulgated May 6th, 1872, 13 Wall. xi.

For this Clause in the Revision of 1884, see 108 U. S. 575.

AUTHORITIES.

1. Where appellant was served with notice of motion to dismiss, but without any accompanying brief or argument, within the time required by the Rule, yet as appellant himself filed before the hearing a full argument

upon the merits of the motion, the Supreme Court treated the filing of his argument as a waiver by him of the objection that the notice of motion was insufficient.

Thomas & Co. v. Wooldridge, 23 Wall. 283, (288). (October Term, 1874.)

2. The Supreme Court will not decide a motion to dismiss an appeal before the record is printed. When there is any question about the facts on which a motion rests, the consideration of the motion will be postponed until the case is heard on its merits. To get a decision before printing, the motion papers must present the case in a way which will enable the Supreme Court to act understandingly, without referring to the transcript or record.

National Bank v. Insurance Co., 100 U. S. 43. (October Term, 1879.)

5. There may be united, with a motion to dismiss a writ of error or an appeal, a motion to affirm on the ground that, although the record may show that this court has jurisdiction, it is manifest the writ or appeal was taken for delay only, or that the question on which the jurisdiction depends is so frivolous as not to need further argument.

HISTORY.

This Clause is, with the exception of certain substantial changes, the same as the amendment added at the end of paragraph 3 of General Rule 6, as contained in the Revision of May 1st, 1871, and promulgated May 8th, 1876, 91 U. S. vii., the difference being that the words "or an appeal" in the foregoing Clause 5, were not contained in the amendment, but in their place were the words "to a State Court," and the words "or appeal" in the foregoing Clause 5, were not contained in said amendment, thus limiting the provisions of the amendment to motions to dismiss writs of error to a *State Court*, and excluding other writs of error, and all appeals from the benefit of the amendment. General Rule 6 was still further amended November 4th, 1878, 97 U. S. vii., by extending the provisions of prior amendment to all writs of errors and appeals, the language of this amendment being substantially the same as the present Clause 5 of General Rule 6. For this Clause in the Revision of 1884, see 108 U. S. 575.

AUTHORITIES.

1. The Supreme Court states that unless some unforeseen inconvenience should arise from the practice, they will not refuse to hear a motion to dismiss before the term to which, in regular course, the record ought to be returned, as it will be likely to prevent great delays and expense, and further the ends of justice.

Ex parte Russell, 13 Wall. 664, (671). (December Term, 1871.)

2. Where it appears from the printed record that the Supreme Court evidently has no jurisdiction, the court where the defendants in error have filed a copy of the record and docketed the case will grant a motion to dismiss for want of jurisdiction before the return day thereof; the Court stating that in the crowded state of their docket, it becomes them to be especially careful that their jurisdiction is not invoked for delay merely; and, when the record is presented in such a form that they can without too great inconvenience inform themselves of the question to be decided, they will be inclined to receive applications of this kind.

Clark v. Hancock, 94 U. S. 493. (October Term, 1876.)

3. The Supreme Court states that amended Rule 6 (the same as the foregoing Clause 5) allows a motion to affirm to be united with a motion to dismiss, and that that implies that there shall appear on the record at least some color of right to a dismissal. That is not pretended in this case. Motion to affirm only is therefore denied, the Court saying that their experience teaches that the only way to discourage frivolous appeals and writs of error is by the use of their power to award damages, and declaring that hereafter more attention would be given to that subject, and the rule enforced both according to its letter and spirit, and that parties should not be subjected to the delay of proceedings for review in the Supreme Court without reasonable cause, and that the power of the Court to make compensation to some extent for the loss occasioned by an unwarranted delay ought not to be overlooked.

Whitney v. Cook, 99 U. S. 607. (October Term, 1878.)

4. A case where the appellee had coupled with a motion to dismiss on the ground of a defect in the bond, a motion to affirm on the ground that the appeal was taken for delay only. The Supreme Court *held* that this was not a case for the application of the Rule.

Gay v. Parpart, 101 U. S. 391. (October Term, 1879.)

5. A case where a motion to dismiss was denied, but a motion to affirm was granted, on the authority of *Whitney v. Cook*, 99 U. S. 607 (Authority No. 3 under this Clause of Rule 6), there being a motion to affirm united with a motion to dismiss, and some color of right to a dismissal.

Hinckley v. Morton, 103 U. S. 764. (October Term, 1880.)

6. In a case where a motion to dismiss a writ of error was united with a motion to affirm, the motion to dismiss was denied, but there was on the record, as it stood when the motions were made, at least sufficient color of right to a dismissal to justify the court in entertaining with it a motion to affirm, and the motion to affirm was granted, it being evident from the record that the writ was taken for delay only.

Micas v. Williams, 104 U. S. 556. (October Term, 1881.)

7. A motion to dismiss denied because the Supreme Court had juris-

diction, but a motion to affirm granted, as the only federal question presented on the merits was decided by the court below in accordance with previous rulings of the Supreme Court.

Swope v. Leffingwell, 105 U. S. 3. (October Term, 1881.)

8. An admiralty case in which a motion to dismiss was overruled, but a motion to affirm granted, the Supreme Court being satisfied from the record that the appeal was taken for delay.

The "S. C. Tryon," 105 U. S. 267 (270). (October Term, 1881.)

9. A case where the Supreme Court states that there is not such a color of right to a dismissal as to make it proper to consider a motion to affirm, citing *Whitney v. Cook*, 99 U. S. 607 (Authority No. 3 under this Clause of Rule 6).

School District of Ackley v. Hall, 106 U. S. 428. (October Term, 1882.)

[See same case under Clause 4, Rule 21.]

10. A case where the record was not printed, and there was united with a motion to dismiss, on the ground that no federal question was involved, a motion to affirm. The assignment of errors was printed in the brief of the defendants. The Supreme Court held that certain of the assignments presented questions of which the Court appeared to have jurisdiction, but that whether the errors thus assigned appeared in the record, the Court could not, on the motion as then presented, finally determine; but that, in the absence of any showing to the contrary, it would presume that they did; that the questions involved were not of such a character that the Supreme Court was inclined to consider them on a motion to affirm, especially before the record was printed, and that it would be time enough to consider the objections to the assignment of errors when the case came on for hearing.

Crane Iron Co. v. Hoagland, 108 U. S. 5. (November 26th, 1882.)

11. The Supreme Court refused, in the absence of a printed record, to dismiss an appeal, as the motion papers showed equitable reasons why the motion should not be granted.

Mayer v. Walsh, 108 U. S. 17. (December 18, 1882.)

12. Where the defendant in error asked for a dismissal because the writ of error was not made returnable on any particular day, and the plaintiff asked leave to amend the writ by inserting the proper return day, the leave was granted, the motion to dismiss overruled, but the motion to affirm granted, as the case was manifestly brought for delay.

Evans v. Brown, 109 U. S. 180. (October Term, 1883.)

13. A case where the defendant in error moved to dismiss the case for want of a sufficient writ of error, and where there was united with this motion a motion to affirm under this Clause of Rule 6. The plaintiff in error moved for leave to amend the writ. The motion to amend the writ

of error was granted, and the motion to dismiss denied, provided the amendments were made by a certain time, otherwise granted. As the case upon the merits was not of a character to be disposed of on a motion to affirm, this motion was consequently overruled.

The Texas Pacific Railway Company v. Kirk, 111 U. S. 486. (April 21st, 1884.)

[See same case under Clause 1, Rule 5.]

6. The court will not hear arguments on Saturday, (unless for special cause it shall order to the contrary,) but will devote that day to the other business of the court. The motion-day shall be Monday of each week; and motions not required by the rules of the court to be put on the docket shall be entitled to preference immediately after the reading of opinions, if such motions shall be made before the court shall have entered upon the hearing of a case upon the docket.

HISTORY.

The first Original General Rule relating to motion-days was adopted at February Term, 1824, 9 Wheat. iv., where the Rule is numbered 3, and it is substantially the same as the present Clause, except that *Saturday* was therein designated as motion-day. In 1 Pet. xi., the same Rule appears as Original General Rule 33, and is given as of February Term, 1825. In 1 How. xxxii., the same Original General Rule appears as Rule 34 of February Term, 1824. On December 4th, 1845, 3 How. v., this Rule was modified by declaring that the Court would not hear arguments on Saturday (unless for special cause it should order to the contrary), but would devote that day to the other business of the Court, and by designating Friday in each week as motion-day. As so modified, the Original General Rule appears as General Rule 27 of the General Rules as revised and corrected at December Term, 1858, 21 How. xv., and as the third Clause of General Rule 6, of the Revision of May 1st, 1871. The latter Clause was amended by changing the motion-day from Friday to Monday, by amendment promulgated December 14th, 1874, 20 Wall. xv. For this Clause in the Revision of 1884, see 108 U. S. 575.

AUTHORITIES.

1. Motions to dismiss are non-enumerated motions, and they may be filed by leave of the court in any case on the calendar before the case is reached in the regular call of the docket, and they are entitled to preference on the day in each week assigned to them by the court in its Rules, but they do not give either party any right to be heard upon the merits of the controversy.

"*The Eutaw*," 12 Wall. 136. (December Term, 1870.)

Rule 7.

LAW LIBRARY.

1. During the session of the court, any gentleman of the bar having a case on the docket, and wishing to use any book or books in the law library, shall be at liberty, upon application to the clerk of the court, to receive an order to take the same (not exceeding at any one time three) from the library, he being thereby responsible for the due return of the same within a reasonable time, or when required by the clerk. It shall be the duty of the clerk to keep, in a book for that purpose, a record of all books so delivered, which are to be charged against the party receiving the same. And in case the same shall not be so returned, the party receiving the same shall be responsible for and forfeit and pay twice the value thereof, and also one dollar per day for each day's detention beyond the limited time.

HISTORY.

This Clause is, with the exception of some slight verbal changes, the same as the first Clause of Original General Rule 39, adopted at January Term, 1883, 7 Pet. iv.; 1 How. xxxiv., and the same as the first Clause of General Rule, No. 7 of the General Rules as revised and corrected at December Term, 1858, 21 How. vi., and as Clause 1 of Rule 7 of the Revision of May 1st, 1871. For this clause in the Revision of 1884, see 108 U. S. 576.

FEDERAL STATUTES.

"Sec. 84. The Librarian shall make the purchases of books for the law library, under the direction of and pursuant to the catalogue furnished him by the Chief Justice of the Supreme Court."

Revised Statutes (Second Edition), § 84, p. 15; Act of Congress of 14th July, 1832, ch. 221, sec. 3, 4 Stat. at Large, 579.

"Sec. 93. No book shall be taken from the Library except by the President, the Vice-President, Senators, Representatives, and Delegates in Congress, and the persons enumerated in section ninety-four, or otherwise authorized by law."

Revised Statutes (Second Edition), § 93, p. 16; Act of Congress, of 26th January, 1802, ch. 2, sec. 4, 2 Stat. at Large, 129.

"Sec. 94. The Joint Committee on the Library is authorized to grant the privilege of using and drawing books from the Library, in the

same manner and subject to the same regulations as members of Congress, to any of the following persons:

* * * * *

“Second. The Chief Justice and associate justices, the reporter and clerk of the Supreme Court.

* * * * *

Revised Statutes (Second Edition), § 94, second Clause, p. 16.

Resolution of Congress of 2d March, 1812, 2 Stat. at Large, 786.

“Sec. 95. The justices of the Supreme Court shall have free access to the law library; and they are authorized to make regulations, not inconsistent with law, for the use of the same during the sittings of the court. But such regulations shall not restrict any person authorized to take books from the Library from having access to the law library, or using the books therein in the same manner as he may be entitled to use the books of the general Library.”

Revised Statutes (Second Edition), § 95, p. 17; Act of Congress of 14th July, 1832, ch. 221, sec. 2, 4 Stat. at Large, 579.

“Sec. 96. Ten of the copies of the Statutes at Large, published by Little, Brown & Co., which were deposited in the Library prior to February fifth, eighteen hundred and fifty-nine, shall be retained by the Librarian for the use of the justices of the Supreme Court, during the terms of court.”

Revised Statutes (Second Edition), § 96, p. 17; Act of Congress of 5th February, 1859, ch. 22, sec. 11, 11 Stat. at Large, 381.

For provisions of the Federal Statutes relating to the Library of Congress and the Librarian generally, see Revised Statutes, § 80 to 100 inclusive (pp. 15–17), 4948 to 4951 inclusive (p. 957), and 4955 to 4960 inclusive (p. 958). Also Act of Congress of 18th June, 1874, ch. 301, sec. 2, 18 Stat. at Large, 78; also Act of Congress of 3d March, 1875, ch. 179, 18 Stat. at Large, 512; also Act of Congress of 19th June, 1878, ch. 317, 20 Stat. at Large, 171.

2. The clerk shall deposit in the law library, to be there carefully preserved, one copy of the printed record in every case submitted to the court for its consideration, and of all printed motions, briefs, or arguments filed therein.

HISTORY.

This Clause is in precisely the same language as the amendment to General Rule 7, promulgated October 25th, 1875, 91 U. S. vii. For this Clause in the Revision of 1884, see 108 U. S. 576.

3. The marshal shall take charge of the books of the court, together with such of the duplicate law-books as Congress may direct to be transferred to the court, and arrange them in the conference-room, which he shall have fitted up in a proper manner; and he shall not permit such books to be taken therefrom by any one except the justices of the court.

HISTORY.

Original General Rule 48, adopted in 1841, 1 How. xxxvii., was *totidem verbis*, with the exception of the use of the word "Clerk" for "Marshal," and "Judges" for "Justices," the same as this Clause. Prior to that time, by the second Clause of Original General Rule 39, adopted at January Term, 1833, 7 Pet. iv., 1 How. xxxiv., any judge of the Court was permitted, during the session of the court, to take from the Law Library any book or books he might think proper, he being responsible for the due return thereof. In the General Rules, as revised and corrected at December Term, 1858, 21 How. vii., and in the Revision of May 1st, 1871, this Clause, with the exceptions first above noted, appeared *totidem verbis* as Clause 2 of Rule 7. For this Clause in the Revision of 1884, see 108 U. S. 576.

FEDERAL STATUTES.

RELATING TO THE MARSHAL OF THE SUPREME COURT.

"Sec. 677. The Supreme Court shall have power to appoint a clerk and a marshal for said court, and a reporter of its decisions."

Revised Statutes (Second Edition), § 677, p. 125; Act of Congress of 2d March, 1867, ch. 156, sec. 2, 14 Stat. at Large, 433.

"Sec. 680. The marshal is entitled to receive a salary at the rate of three thousand five hundred dollars a year. He shall attend the court at its sessions; shall serve and execute all process and orders issuing from it, or made by the Chief Justice or an associate justice in pursuance of law; and shall take charge of all property of the United States used by the court or its members. With the approval of the Chief Justice he may appoint assistants and messengers to attend the court, with the compensation allowed to officers of the House of Representatives of similar grade."

Revised Statutes (Second Edition), § 680 p. 125; Act of Congress of 24th September, 1789, ch. 20, sec. 27, 1 Stat. at Large, 87; Act of Congress of 27th February, 1801, ch. 15, sec. 7, 2 Stat. at Large, 106.

"Sec. 832. The marshal of the Supreme Court of the United States, shall be entitled to receive for the service of any warrant, attachment, summons, capias, or other writ, except execution, venire, or a summons, or subpoena for a witness, one dollar for each person on

whom such service may be made. His fees for all other services shall be the same as are herein allowed to other marshals; but he shall pay into the Treasury of the United States all fees received by him, and render a true account thereof at the close of each term to the Attorney-General."

Revised Statutes (Second Edition), § 832, p. 157; Act of Congress of 27th June, 1864, ch. 163, §§ 1, 4, 13 Stat. at Large, pp. 195, 196; Act of Congress of 2d March, 1867, ch. 156, sec. 2, 14 Stat. at Large, 433; Act of Congress of 22d June, 1870, ch. 150, sec. 15, 16 Stat. at Large, 164.

For the amount of Marshal's Fees, see sections 829, 830 and 831 Revised Statutes (Second Edition), pp. 155-157.

"Sec. 4799. Whenever, in the opinion of the Chief Justice, or, in case of his death, or inability, of the senior associate justice of the Supreme Court, a contagious, or epidemic sickness shall render it hazardous to hold the next stated session of the court at the seat of Government, the chief or such associate justice may issue his order to the marshal of the Supreme Court, directing him to adjourn the next session of the court to such other place as such justice deems convenient. The marshal shall thereupon adjourn the court, by making publication thereof in one or more public papers printed at the seat of Government from the time he shall receive such order until the time by law prescribed for commencing the session. The several circuit and district judges shall, respectively, under the same circumstances, have the same power, by the same means, to direct adjournments of the several Circuit and District Courts to some convenient place within their districts respectively."

Revised Statutes (Second Edition), § 4799, p. 932; Act of Congress of 25th February, 1799, ch. 12, sec. 7, 1 Stat. at Large, 621; Act of Congress of 3d March, 1867, ch. 156, sec. 2, 14 Stat. at Large, 433.

Rule 8.

WRIT OF ERROR, RETURN AND RECORD.

1. The clerk of the court to which any writ of error may be directed shall make return of the same, by transmitting a true copy of the record, and of the assignment of errors, and of all proceedings in the case under his hand and the seal of the court.

HISTORY.

With the exception of the transposition of the words "may" and "shall," which are respectively before and after the words "be directed," and the addition of the words "and of the assignment of errors," this

Clause is substantially the same as Original General Rule 11, adopted February 13th, 1797, 3 Dallas, 356; 1 Cranch, xvii.; 1 Wheat. xv.; 1 Pet. vii.; 1 How. xxv., and as Clause 1 of General Rule 8 of the Revision of December Term, 1858, 21 How. vii., and of the Revision of May 1st, 1871. For this Clause in the Revision of 1884, see 108 U. S. 576.

FEDERAL STATUTES.

“Sec. 691. All final judgments of any circuit court, or of any district court acting as a Circuit Court, in civil actions brought there by original process, or removed there from courts of the several States, and all final judgments of any circuit court in civil actions removed there from any district court by appeal or writ of error, when the matter in dispute, exclusive of costs, exceeds the sum or value of five [two] thousand dollars, may be re-examined and reversed or affirmed in the Supreme Court upon a writ of error.”

Revised Statutes (Second Edition), § 691, p. 128, as amended as to limitation of amount, by Act of Congress of 16th February, 1875, *supra*; Act of Congress of 24th September, 1789, ch. 20, sec. 22, 1 Stat. at Large, 84; Act of Congress of 3d March, 1803, ch. 40, sec. 2, 2 Stat. at Large, 244; Act of Congress of 4th July, 1840, ch. 43, sec. 3, 5 Stat. at Large, 393; Act of Congress of 16th February, 1875, ch. 77, sec. 3, 18 Stat. at Large, 316, increasing sum or value from \$2,000 to \$5,000; Act of Congress of 1st March, 1875, ch. 114, sec. 5, 18 Stat. at Large, 335; Act of Congress of 3d March, 1875, ch. 137, sec. 5, 18 Stat. at Large, 472; Act of Congress of 26th June, 1876, ch. 147, 19 Stat. at Large, 62; Act of Congress of 25th February, 1879, ch. 99, sec. 4, 20 Stat. at Large, 320.

“Sec. 692. An appeal shall be allowed to the Supreme Court from all final decrees of any circuit court, or of any district court acting as a circuit court, in cases of equity, and of admiralty and maritime jurisdiction, where the matter in dispute, exclusive of costs, exceeds the sum or value of five [two] thousand dollars, and the Supreme Court is required to receive, hear, and determine such appeals.”

Revised Statutes (Second Edition), § 692, p. 129, as amended as to limitation of amount by Act of Congress of 16th February, 1875, *supra*; Act of Congress of 3d March, 1803, ch. 40, sec. 2, 2 Stat. at Large, 244; Act of Congress of 30th June, 1864, ch. 174, sec. 13, 13 Stat. at Large, 310; Act of Congress of 16th February, 1875, ch. 77, sec. 3, 18 Stat. at Large, 316, increasing sum or value from \$2,000 to \$5,000; Act of Congress of 1st March, 1875, ch. 114, sec. 5, 18 Stat. at Large, 337.

[See this section under Clause 6, Rule 8.]

See also sections 693 and 694 Revised Statutes (Second Edition), 129.

“Sec. 695. An appeal shall be allowed to the Supreme Court from all final decrees of any district court in prize causes, where the

matter in dispute, exclusive of costs, exceeds the sum or value of two thousand dollars; and shall be allowed, without reference to the value of the matter in dispute, on the certificate of the district judge that the adjudication involves a question of general importance. And the Supreme Court shall receive, hear, and determine such appeals, and shall always be open for the entry thereof."

Revised Statutes (Second Edition), § 695, p. 129; Act of Congress of 3d March, 1803, ch. 40, sec. 2, 2 Stat. at Large, 244; Act of Congress of 30th June, 1864, ch. 174, sec. 13, 13 Stat. at Large, 310.

[See this section under Clause 6, Rule 8.]

See also sections 696 and 697 Revised Statutes (Second Edition), 130.

Sec. 698 Revised Statutes (Second Edition), 130.

[See same under Clauses 4 and 6, Rule 8.]

See also sections 699 to 710 inclusive, Revised Statutes (Second Edition), 130-134.

"Sec. 716. The Supreme Court and the circuit and district courts shall have power to issue writs of scire facias. They shall also have power to issue all writs not specifically provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the usages and principles of law."

Revised Statutes (Second Edition), § 716, p. 136; Act of Congress of 24th September, 1789, ch. 20, sec. 14, 1 Stat. at Large, 81; Act of Congress of 2d March, 1793, ch. 22, sec. 5, 1 Stat. at Large, 334.

Sec. 750 Revised Statutes (Second Edition), 141.

[See same under Clause 6, Rule 8.]

"Sec. 997. There shall be annexed to and returned with any writ of error for the removal of a cause, at the day and place therein mentioned, an authenticated transcript of the record, an assignment of errors, and a prayer for reversal, with a citation to the adverse party."

Revised Statutes (Second Edition), § 997, p. 186; Act of Congress of 24th September, 1789, ch. 20, sec. 22, 1 Stat. at Large, 84; Act of Congress of 5th February, 1867, ch. 28, sec. 2, 14 Stat. at Large, 386.

"Sec. 999. When the writ is issued by the Supreme Court to a circuit court, the citation shall be signed by a judge of such circuit court, or by a justice of the Supreme Court, and the adverse party shall have at least thirty days' notice; and when it is issued by the Supreme Court to a State court, the citation shall be signed by the Chief Justice, or judge or chancellor, of such court, rendering the judgment or passing the decree complained of, or by a justice of

the Supreme Court of the United States, and the adverse party shall have at least thirty days' notice."

Revised Statutes (Second Edition), § 999, p. 187; Act of Congress of 24th September, 1789, ch. 20, sec. 22, 1 Stat. at Large, 84; Act of Congress of 5th February, 1867, ch. 28, sec. 2, 14 Stat. at Large, 386.

[See this section under Clause 5, Rule 8.]

"Sec. 1002. Writs of error shall be prosecuted from the final judgments of district courts acting as circuit courts to the Supreme Court in the same manner as from the final judgments of Circuit courts."

Revised Statutes (Second Edition), § 1002, p. 187; Act of Congress of 24th September, 1789, ch. 20, sec. 10, 1 Stat. at Large, 77.

[See this section under Clause 5, Rule 8.]

"Sec. 1003. Writs of error from the Supreme Court to a State court in cases authorized by law, shall be issued in the same manner, and under the same regulations, and shall have the same effect as if the judgment or decree complained of had been rendered or passed in a court of the United States."

Revised Statutes (Second Edition), § 1003, p. 187; Act of Congress of 24th September, 1789, ch. 20, sec. 25, 1 Stat. at Large, 85, 86; Act of Congress of 5th February, 1867, ch. 28, sec. 2, 14 Stat. at Large, 386.

[See this section under Clause 5, Rule 8.]

"Sec. 1004. Writs of error returnable to the Supreme Court may be issued as well by the clerks of the circuit courts, under the seals thereof, as by the clerk of the Supreme Court. When so issued they shall be, as nearly as each case may admit, agreeable to the form of a writ of error transmitted to the clerks of the several circuit courts by the clerk of the Supreme Court, in pursuance of section nine of the act of May eighth, seventeen hundred and ninety-two, chapter thirty-six."

Revised Statutes (Second Edition), § 1004, p. 188.

[See this section under Clause 5, Rule 8.]

See sec. 9, ch. 5, of Act of Congress of 8th May, 1792 (1 Stat. at Large, 278), printed immediately below.

"Sec. 9. *And be it further enacted*, That it shall be the duty of the clerk of the Supreme Court of the United States, forthwith to transmit to the clerks of the several circuit courts the form of a writ of error, to be approved by any two of the judges of the supreme court, and it shall be lawful for the clerks of the said circuit courts to issue writs of error agreeably to such forms, as nearly as the case may admit, under the seal of the said circuit courts, returnable to the supreme court, in the same manner as the clerk of the Supreme Court may issue such writs, in pursuance

of the act, entitled 'An act to establish the judicial courts of the United States.' "

Act of Congress of 8th May, 1792, ch. 36, sec. 9, 1 Stat. at Large, 278.
[See this section under Clause 5, Rule 8.]

"Sec. 1005. The Supreme Court may, at any time, in its discretion and upon such terms as it may deem just, allow an amendment of a writ of error, when there is a mistake in the teste of the writ, or a seal to the writ is wanting, or when the writ is made returnable on a day other than the day of the commencement of the term next ensuing the issue of the writ, or when the statement of the title of the action or parties thereto in the writ is defective, if the defect can be remedied by reference to the accompanying record, and in all other particulars of form: *Provided*, The defect has not prejudiced, and the amendment will not injure, the defendant in error."

Revised Statutes (Second Edition), § 1005, p. 188; Act of Congress of 1st June, 1872, ch. 255, sec. 3, 17 Stat. at Large, 197.

[See this section under Clause 5, Rule 8.]

"Sec. 1006. The Supreme Court may, if, in its judgment, the purposes of justice require it, allow any amendment, either in form or substance, of any appeal in prize causes."

Revised Statutes (Second Edition), § 1006, p. 188; Act of Congress of 3d March, 1873, ch. 230, sec. 2, 17 Stat. at Large, 556.

[See this section under Clauses 5 and 6, Rule 8.]

"Sec. 1008. No judgment, decree, or order of a circuit or district court, in any civil action, at law or in equity, shall be reviewed in the Supreme Court, on writ of error or appeal, unless the writ of error is brought, or the appeal is taken, within two years after the entry of such judgment, decree, or order: *Provided*, That where a party entitled to prosecute a writ of error or to take an appeal is an infant, insane person, or imprisoned, such writ of error may be prosecuted, or such appeal may be taken, within two years after the judgment, decree, or order, exclusive of the term of such disability.

Revised Statutes (Second Edition), § 1008, p. 188; Act of Congress of 1st June, 1872, ch. 255, sec. 2, 17 Stat. at Large, 196.

"Sec. 1009. Appeals in prize causes shall be made within thirty days after the rendering of the decree appealed from, unless the court previously extends the time, for cause shown in the particular case: *Provided*, That the Supreme Court may, if in its judgment the purposes of justice require it, allow an appeal in any prize cause, if it appears that any notice of appeal, or of intention to appeal,

was filed with the clerk of the district court within thirty days next after the rendition of the final decree therein."

Revised Statutes (Second Edition), § 1009, p. 188; Act of Congress of 30th June, 1864, ch. 174, sec. 13, 13 Stat. at Large, 310; Act of Congress of 3d March, 1873, ch. 230, sec. 2, 17 Stat. at Large, 556.

[See this section under Clauses 5 and 6, Rule 8.]

"Sec. 1012. Appeals from the circuit courts and district courts acting as Circuit Courts, and from district courts in prize causes, shall be subject to the same rules, regulations, and restrictions as are or may be prescribed in law in cases of writs of error."

Revised Statutes (Second Edition), § 1012, p. 189; Act of Congress of 3d March, 1803, ch. 40, sec. 2, 2 Stat. at Large, 244; Act of Congress of 30th June, 1864, ch. 174, sec. 13, 13 Stat. at Large, 310.

[See this section under Clauses 5 and 6, Rule 8.]

"Sec. 1013. Where appeal is duly taken by both parties from the judgment or decree of a circuit or district court to the Supreme Court, a transcript of the record filed in the Supreme Court by either appellant may be used on both appeals, and both shall be heard thereon in the same manner as if records had been filed by the appellants in both cases."

Revised Statutes (Second Edition), § 1013, p. 189; Act of Congress of 6th August, 1861, ch. 61, sec. 1, 12 Stat. at Large, 319.

"Sec. 4636. The Supreme Court may, if, in its judgment, the purposes of justice require it, allow any amendment, either in form or substance, of any appeal in prize cases, or allow a prize appeal therein, if it appears that any notice of appeal or of intention to appeal was filed with the clerk of the district court within thirty days next after the rendition of the final decree therein."

Revised Statutes (Second Edition), § 4636, p. 902; Act of Congress of 3d March, 1873, ch. 230, sec. 2, 17 Stat. at Large, 556.

[See this section under Clauses 5 and 6, Rule 8.]

"Sec. 2. That said Courts when sitting in equity for the trial of patent cases, may impanel a jury of not less than five and not more than twelve persons, subject to such general rules in the premises as may, from time to time, be made by the Supreme Court, and submit to them such questions of fact arising in such cause as such Circuit Court shall deem expedient; and the verdict of such jury shall be treated and proceeded upon in the same manner and with the same effect as in the case of issues sent from chancery to a court of law and returned with such findings."

Act of Congress of 16th February, 1875, ch. 77, sec. 2, 18 Stat. at Large, 316.

[For section 1 of this Act see Clause 6, Rule 8.]

AUTHORITIES.

1. Where in a writ of error there was a blank for the return day, but the indorsement showed that it was filed below, and when so filed, as well as the term at which it was returnable, the Supreme Court allowed the writ to be amended by inserting the return day.

Mossman v. Higginson, 4 Dallas, 12. (February Term, 1800.)

[See this case under Clause 5, Rule 8.]

2. It is not necessary that the transcript of the record should contain the names of the the jurors.

Owens v. Hanney, 9 Cranch, 180. (February 8th, 1815.)

3. The Supreme Court states that according to the rules and practice of the Court a return made by the clerk of the Circuit Court was a sufficient return.

Stewart v. Ingle, 9 Wheat. 526. (February Term, 1824.)

4. When the record is certified by the clerk of the court below, and is authenticated by the seal of the court, and is returned with and annexed to a writ of error issued in regular form, the citation having been properly signed and served, the signature of the judge of the court below is not necessary in addition to that of the clerk. The law does not require it. The Rule does not require it.

Worcester v. The State of Georgia, 6 Pet. 515, (536). (January Term, 1832.)

5. A case dismissed under the 11th and 31st (apparently a mistake for 30th. See History of this Clause and of Clause 3 of this Rule) Rules of the Supreme Court, as it was brought up on a record containing nothing but an agreed statement of facts, the judgment of the Circuit Court on those facts, and the petition of the defendant for a writ of error, together with its allowance, and without any of the proceedings in the court below being in the record.

Keene v. Whittaker, 13 Pet. 459. (January Term, 1839.)

[See same case under Clause 3, Rule 8.]

6. When the record, as certified, consists of an agreed statement of facts, and the judgment rendered thereon, and a judgment rendered on a motion for a new trial, being the proceedings after the submission of the case, *held* that this is not such a transcript as will satisfy the 11th and 31st (see criticism under previous authority of *Keene v. Whittaker*) Rules of the Supreme Court, under the decision in *Keene v. Whittaker*, 13 Pet. 459 (Authority No. 5, under this Clause of Rule 8).

Curtis v. Petittpain, 18 How. 109. (December Term, 1855.)

7. Where the clerk of the Supreme Court of a State neglects or refuses to make return to a writ of error issued under the 25th section of the Act of Congress of 1789, ch. 20, known as the Judiciary Act, the Supreme

Court of the United States will lay a rule upon him to make the return on or before the first day of the next term of the court, or show cause to excuse or justify his neglect or refusal to obey the writ.

United States v. Booth, 18 How. 476. (December Term, 1855.)

8. The original writ of error should always be sent to the Supreme Court with the transcript, but if it appears that the original writ has been lost or destroyed before it reaches the Supreme Court, a true copy of the writ, if annexed to the transcript, is sufficient, as it is well settled that rights acquired under a valid writ or process, while it was in force, cannot be defeated by the loss or destruction of the writ, if its existence, and the acts done under it, can be substantiated by other testimony.

Mussina v. Cavazos, 6 Wall. 355. (December Term, 1867.)

9. Writs of error dismissed in two cases. In one of these cases there were but three plaintiffs in error, while the citation contained four, and in the other case the names in the citation were different from those in the writ of error; bonds, moreover, in both cases reciting but one person as plaintiff in error, when there were in fact three. The Supreme Court remarked that the numerous errors in the proceedings were remarkable.

Kail v. Wetmore, 6 Wall. 451. (December Term, 1867.)

10. Where a paper which purported to be a transcript contained only a blank form of the certificate of authentication, without the seal of the court below, or the signature of its clerk, the Supreme Court dismissed the writ of error, but granted leave to the plaintiff in error to withdraw the record from the files, but not, however, for the purpose of having the record returned, and having the case placed on the docket as if it had been regularly filed. The Supreme Court held that the case could only be brought to the court again by a new writ of error.

Blitz v. Brown, 7 Wall. 693. (December Term, 1868.)

11. Where an appeal was allowed in the name of *William A. Freeborn & Co. v. The Ship "Protector," and owners*, the Supreme Court dismissed the case for want of jurisdiction, and held that the defect in the title, in that the names of the libellants were not set out in full, could not be amended.

"*The Protector*," 11 Wall. 82 (86). (December Term, 1870.)

[See same case under Clause 1, Rule 9.]

12. A case where the Supreme Court held that where the Supreme Court of a State is composed of a Chief Justice and three associate Justices, a writ of error can only be allowed by the Chief Justice of that court, or by a Justice of the Supreme Court of the United States; and that in case of a writ to a court composed of a single judge or chancellor, the writ may be allowed by that judge or chancellor, or by a Justice of the Supreme Court of the United States.

Bartemeyer v. Iowa, 14 Wall. 26 (28). (December Term, 1871.)

13. The certificate of the clerk of the court below that the record sent to the Supreme Court by him is a full, complete, true and perfect transcript of the record and proceedings in the court below is *prima facie* evidence that an allegation in a motion to dismiss an appeal that the transcript did not contain a true copy of the record and of all the proceedings in the case is not well founded, even in the face of things apparent in the transcript itself, and in the face of the assertion of counsel of one side and the admission by counsel of the other that the transcript does not contain a true copy of the record and of all the proceedings in the case, and a motion to dismiss on such allegation was denied. The proper mode to supply deficiencies in the record, viz. by *certiorari*, pointed out (See Rule 14).

"*The Rio Grande*," 19 Wall. 178. (October Term, 1873.)

[See same case under Rule 14.]

14. A transcript of the record is sufficiently authenticated for the purposes of an appeal on a writ of error to the Supreme Court if it is signed by the deputy in the name of and for the clerk of the court from which the appeal comes, or to which the writ of error is directed, and is sealed with the seal of that court.

Garneau v. Dozier, 100 U. S. 7. (October Term, 1879.)

15. A case where many important papers and documents used on the hearing below, and necessary for the proper determination of the cause in the Supreme Court, were omitted in the transcript as filed. The Supreme Court ordered the appellees to file with the clerk of the Supreme Court and with the counsel for the appellant, on or before a certain time, a statement of the papers, documents, and proofs used on the hearing below, and omitted in the transcript then on file, which they deemed necessary for the proper presentation of the cause, and further ordered that unless the appellant should, on or before a certain specified time, file in the Supreme Court as part of the record, copies of such papers, duly certified by the clerk of the Circuit Court or his deputy, under the seal of the court, the appeal should be dismissed.

Railroad Co. v. Schutte, 100 U. S. 644 (647.) (October Term, 1879.)

[See same case under Rule 29.]

2. In all cases brought to this court, by writ of error or appeal, to review any judgment or decree, the clerk of the court by which such judgment or decree was rendered shall annex to and transmit with the record a copy of the opinion or opinions filed in the case.

HISTORY.

This provision did not appear among any of the General Rules until

after the Revision of May 1st, 1871. This Clause, with the exception of some immaterial verbal alterations, is the same as the amendment promulgated April 28th, 1873, 15 Wall. v., to General Rule 8 of the Revision of May 1st, 1871. For this Clause in the Revision of 1884, see 108 U. S. 576.

AUTHORITIES.

1. In an appeal from the Supreme Court of Louisiana, decided before this Clause was originally promulgated, the Supreme Court states that in examining the judgment of the State court, it referred to the opinion of that court, which is made part of the record by the laws of Louisiana, and is explanatory of the judgment of which it is there deemed an essential part.

Cousin v. Blanc's Executor, 19 How. 202 (207). (December Term, 1856.)

3. No case will be heard until a complete record, containing in itself, and not by reference, all the papers, exhibits, depositions, and other proceedings, which are necessary to the hearing in this court, shall be filed.

HISTORY.

This Clause, with the exception of some immaterial changes, and with the substitution of the words "and not by reference" for the words "without references *aliunde*," is the same as an Original General Rule adopted at February Term, 1823, and reported without a number in 8 Wheat. vi., and as Original General Rule 30, in 1 Pet. x., and as Clause 2 of General Rule 8 of the Revision of December Term, 1858, 21 How. vii., and that of May 1st, 1871. For this Clause in the Revision of 1884, see 108 U. S. 577.

FEDERAL STATUTES.

See the Federal Statutes cited under Clause 1, Rule 8.

AUTHORITIES.

1. In a case where there was nothing in the record to show that the controversy grew out of a prize cause, and where the declaration, which stated that the plaintiffs were owners of the privateer, did not state that the property in dispute was captured by her, and where the verdict was only upon the count for money had and received, and where, by the finding of the jury, all the other counts which referred to the capture were put entirely out of the case, and the money count did not refer to the account annexed to the declaration, and therefore that account could not be taken into view to show that the question depended on a capture as prize, the Supreme Court said that the depositions and papers arbitrarily connected with the record by

the clerk below (and which did not comprise all the evidence given on the trial) were not legally a part of the record, and could not be resorted to in order to ascertain the nature of the controversy, but must be rejected as surplusage, and that the Court could look only at the statement in the bill of exceptions to discover the complexion of the cause.

Bingham v. Cabbot, 3 Dallas, 19 (27). (February Term, 1795.)

2. In cases at common law, the course of the Supreme Court has been uniform not to consider any paper as part of the record which was not made so by the pleadings, or by some opinion of the court referring to it. This rule is common to all courts exercising appellate jurisdiction, according to the course of the common law. The appellate court cannot know what evidence was given to the jury unless it be spread on the record in proper legal manner. The unauthorized certificate of the clerk that any document was read, or any evidence given to the jury, cannot make that document or that evidence a part of the record, so as to bring it to the cognizance of the Supreme Court.

The Lessor of Fisher v. Cockerell, 5 Pet. 248 (254). (January Term, 1831.)

3. Where the question of domicile might be material in a case, and the record did not contain any statement on this point, the decree was reversed and the cause remanded with liberty to plaintiff to amend his bill.

Estho v. Lear, 7 Pet. 130. (January Term, 1833.)

4. The ruling in the case of *The Lessor of Fisher v. Cockerell*, 5 Peters, 254 (Authority No. 2 under this Clause of Rule 8), approved. In a case where a new trial is moved for, and where the reasons assigned by the plaintiff for a new trial, and the title papers to which they refer are transmitted and certified to the Supreme Court by the clerk, together with a record of the judgment, the said papers not being a part of the record, the certificate of the clerk cannot make such papers a part of the record, nor can the statement of counsel on a motion for a new trial authorize the Supreme Court to say that certain questions were raised, and certain opinions given upon such evidence.

Lessee of Reed v. Marsh, 13 Peters, 153. (January Term, 1839.)

5. The Supreme Court will not hear any cause until a complete copy of the record has been brought up.

Keene v. Whittaker, 13 Pet. 459. (January Term, 1839.)

6. A citation is not necessarily a part of the record, and the fact of its having been issued and served may be proved *aliunde*, the presumption being that one was issued when the writ of error was allowed.

Innerarity v. Byrne, 5 How. 295. (January Term, 1847.)

4. Whenever it shall be necessary or proper, in the opinion of the presiding judge in any circuit court, or district court exercising circuit-court jurisdiction, that original papers of any kind should be inspected in this court upon writ of error or appeal, such presiding judge may make such rule or order for the safe-keeping, transporting, and return of such original papers as to him may seem proper; and this court will receive and consider such original papers in connection with the transcript of the proceedings.

HISTORY.

This Clause is, with the exception of some immaterial verbal changes, but with the substantial difference that it now applies to writs of error, as well as to appeals, the same as an Original General Rule promulgated at February Term, 1817, and reported without number in 2 Wheat. vii., and as Original General Rule 25 in 1 Pet. ix., and as Original General Rule 26 in 1 How. xxix. Such Original General Rule was limited to appeals, and as so limited was reproduced as Clause 3 of General Rule 8 of the General Rules as revised and corrected at December Term, 1858, 21 How. vii. In the Revision of May 1st, 1871, the provisions of Clause 3 of said General Rule 8 were extended so as to apply to writs of error also, and the Clause, as so extended, appeared as Clause 3 of General Rule 8 of said Revision. For this Clause in the Revision of 1884, see 108 U. S. 577.

FEDERAL STATUTES.

Sec. 698. Upon the appeal of any cause in equity, or of admiralty and maritime jurisdiction, or of prize or no prize, a transcript of the record, as directed by law to be made, and copies of the proofs, and of such entries and papers on file as may be necessary on the hearing of the appeal, shall be transmitted to the Supreme Court: *Provided*, That either the court below or the Supreme Court may order any original document or other evidence to be sent up, in addition to the copy of the record, or in lieu of a copy of a part thereof. And on such appeals no new evidence shall be received in the Supreme Court, except in admiralty and prize causes.

Revised Statutes (Second Edition), § 698, p. 130; Act of Congress of 3d March, 1803, ch. 40, sec. 2, 2 Stat. at Large, 244; Act of Congress of 25th February, 1853, ch. 80, sec. 1, 10 Stat. at Large, 163; Act of Congress of 30th June, 1864, ch. 174, Sec. 13, 13 Stat. at Large, 310; Act of Congress of 7th April, 1874, ch. 80, sec. 2, 18 Stat. at Large, 27, (Relating to Territorial Courts and Appeals therefrom.)

For other Federal Statutes, see Clause 1, Rule 8.

AUTHORITIES.

1. In a prize cause where an inspection and comparison of original documents is material to the decision of the case, the Supreme Court will order the original papers to be sent up from the court below.

“*The Elsinour*,” 1 Wheat. 439. (February Term, 1816.)

2. The Supreme Court states that they think the power of the courts below, and of the Supreme Court over the transmission of original papers to that Court on appeal, is, and should be, confined to such as require actual inspection as originals in order to give them their full effect in the determination of the suit. They will not undertake to control the discretion of the courts below in sending up papers which, in their judgment, require inspection; but where papers come up that ought not to be sent, the Supreme Court will look closely to the language of the order below to see whether they are included within its provisions.

Craig v. Smith, 100 U. S. 226 (232). (October Term, 1879.)

5. In cases where final judgment is rendered more than thirty days before the first day of the next term of this court, the writ of error and citation, if taken before, must be returnable on the first day of said term, and be served before that day; but in cases where the judgment is rendered less than thirty days before the first day, the writ of error and citation may be made returnable on the third Monday of the said term, and be served before that day.

HISTORY.

This Clause is in *totidem verbis*, the same as General Rule No. 33, promulgated at December Term, 1867, 6 Wall. vi., and as Clause 4 of General Rule 8 of the Revision of May 1st, 1871. For this Clause in the Revision of 1884, see 108 U. S. 577.

FEDERAL STATUTES.

See the Federal Statutes cited under Clause 1, Rule 8, and as more especially applicable to this Clause, the following statutes there cited.

Sec. 999 Revised Statutes (Second Edition), 187, and Acts of Congress thereunder cited under Clause 1, Rule 8.

Sec. 1002 Revised Statutes (Second Edition), 187, and Acts of Congress thereunder cited under Clause 1, Rule 8.

Sec. 1003 Revised Statutes (Second Edition), 187, and Acts of Congress thereunder cited under Clause 1, Rule 8.

Sec. 1004 Revised Statutes (Second Edition), 188, and Acts of Congress thereunder cited under Clause 1, Rule 8.

Sec. 9 of ch. 36 of Act of Congress of 8th May, 1792, 1 Stat. at Large, 278, cited under Clause 1, Rule 8.

Sec. 1005 Revised Statutes (Second Edition), 188, and Acts of Congress thereunder cited under Clause 1, Rule 8.

Sec. 1006 Revised Statutes (Second Edition), 188, and Acts of Congress thereunder cited under Clause 1, Rule 8.

Sec. 1009 Revised Statutes (Second Edition), 188, and Acts of Congress thereunder cited under Clause 1, Rule 8.

Sec. 1012 Revised Statutes (Second Edition), 189, and Acts of Congress thereunder cited under Clause 1, Rule 8.

Sec. 4636 Revised Statutes (Second Edition), 902, and Acts of Congress thereunder cited under Clause 1, Rule 8.

AUTHORITIES,

PRIOR TO THE ADOPTION OF GENERAL RULE 33 IN 1867.

1. See *Mossman v. Higginson*, 4 Dallas, 12 (cited in full under Clause 1 of this Rule). (February Term, 1800.)

2. A writ of error not returned at the term to which it is returnable, is a nullity.

Blair v. Miller, 4 Dallas, 21. (February Term, 1800.)

3. A citation must accompany the writ of error.

Lloyd v. Alexander, 1 Cranch, 365. (February Term, 1803.)

Bailiff v. Tipping, 2 Cranch, 406. (February Term, 1805.)

4. If a writ of error be served before the return day, it may be returned after, even at a subsequent term; and the appearance of the defendant in error waives all objection to the irregularity of the return. The service of a writ of error is the lodging of a copy thereof for the adverse party in the office of the clerk of the court where the judgment was rendered.

Wood v. Lide, 4 Cranch, 180. (February Term, 1807.)

5. The Supreme Court will not compel a cause to be heard, unless the citation be served thirty days before the first day of the term.

Welsh v. Mandeville, 5 Cranch, 321. (February Term, 1809.)

6. The Supreme Court refused to quash or dismiss a writ of error for irregularity of its *teste*, holding that a writ of error issued in September, 1810, might bear *teste* of the February term preceding, and might be returnable to the next February term, notwithstanding the intervention of the August term between the *teste* and return of the writ.

Blackwell v. Patten, 7 Cranch, 277. (February Term, 1812.)

7. The Supreme Court refused to quash a writ of error where one of the grounds of the motion was that the record was not filed with the clerk of the court until the month of June, 1832, the writ having been duly served returnable to the January term, 1832. The Supreme Court points out the proper practice under the then Rule 29. (1 Pet. x. See History of Clause 1, Rule 9.)

Pickett's Heirs v. Legerwood, 7 Pet. 144 (147). (January Term, 1833.)

[See same case under Clause 1, Rule 9.]

8. The writ of error is always returnable to the term of the appellate Court next following the date of the writ, and the citation must be returnable to the same term, and unless the writ and citation are both served before the term, the case is not removed to the appellate court, and the writ, if returned afterwards, will be quashed. It follows that where a citation is required in a case of appeal, it must, as in the writ of error, be issued and served on the opposite party before the term of the appellate court next after the appeal is entered.

Villabolas v. United States, 6 How. 81 (90). (January Term, 1848.)

9. The foregoing ruling in *Villabolas v. United States* (Authority No. 8, under this Clause of Rule 8) again asserted.

United States v. Curry, 6 How. 106 (112). (January Term, 1848.)

10. A case dismissed upon the same grounds as in *United States v. Curry* (Authority No. 9 under this Clause of Rule 8).

United States v. Yates, 6 How. 605 (608). [Reporter's note.] (January Term, 1848.)

11. Where no citation has been issued or served upon the defendant in error, the cause must be dismissed on motion.

Hogan v. Ross, 9 How. 602. (January Term, 1850.)

12. Where no return day is named in a writ of error, or there is an omission to file a transcript of the record at the term next succeeding the issuing of the writ or the taking of the appeal, the case must be dismissed for want of jurisdiction.

Carroll v. Dorsey, 20 How. 204. (December Term, 1857.)

[See same case under Clause 1, Rule 9.]

13. A writ of error, if made returnable to any day subsequent to the first day of the term, will be dismissed on motion for want of jurisdiction.

Insurance Co. of the Valley of Virginia v. Mordecai, 21 How. 195 (200). (December Term, 1858.)

14. The same point as in *Insurance Co. of the Valley of Virginia v. Mordecai*, 21 How. 195 (Authority No. 13 under this Clause of Rule 8), re-affirmed, and the Supreme Court also holds that the plaintiff may with-

draw the transcript, and use it in connection with the proper and legal process to bring the case before the Supreme Court, on leaving a receipt with clerk.

Porter v. Foley, 21 How. 393. (December Term, 1858.)

15. Where a writ of error was allowed in open court, but had no seal of the court attached, and was not returned with the transcript to the Supreme Court on the first day of the term when it was returnable, and where two terms later a paper was filed in the clerk's office of the Supreme Court, in form of a writ of error, but without a seal, and with no authenticated transcript annexed, the cause was dismissed.

Overton v. Cheek, 22 How. 46. (December Term, 1859.)

16. A case where a writ of error was sued out in October, returnable the first Monday of December thereafter, and service of the citation was, on the 9th of October, admitted by *William Hart*, SENIOR, for the plaintiff below, *William Hart*, JUNIOR. This writ of error not having been returned during the term to which it was made returnable, it failed to bring up the case. A second writ of error was taken by the defendant below in August, 1859, returnable to the ensuing December Term of the Supreme Court. The citation under this new writ was directed to *William Hart*, JUNIOR, and was served on *Mary Hart*, widow and executrix of *William Hart*, SENIOR, who died after the judgment, and on his former law partner. The Supreme Court dismissed the writ of error on the ground that the citation not being served on the party or his counsel, the cause was not brought into Court, and there was no service of the citation; the Supreme Court saying, that the executrix of the counsel on record was not the counsel of her testator's client, and that the partner of *William Hart*, SENIOR, could not be regarded as the counsel of *William Hart*, JUNIOR, merely because he had been the partner of *William Hart*, SENIOR, and that the Supreme Court cannot recognize law partnerships or other private relations between members of the bar. The courts can know no counsel in a cause except those who regularly appear as such on the record.

Bacon v. Hart, 1 Black, 38. (December Term, 1861.)

17. On an appeal from the District Court of California, under the Act of Congress of March 3d, 1851, ch. 41, 9 Stat. at Large, 633, the Supreme Court held that the allowance of the appeal, together with a copy of the record and the citation, when a citation is required, must be returned to the next term of the Supreme Court after the appeal is allowed, or the writ is sued out, otherwise the writ of error or appeal, as the case may be, will become void.

Castro v. United States, 3 Wall. 46. (December Term, 1865.)

[See same case under Clause 1, Rule 9.]

18. Appeal dismissed for want of jurisdiction, where a decree was

rendered June 13th, 1861, but no appeal prayed for or allowed until the June Term, 1865, when, on motion of defendant below, an appeal was allowed *nunc pro tunc*, as of June 13th, 1861, there being no citation to the appellees, and the record not being brought up at the next term of the Court.

Garrison v. Cass Co., 5 Wall. 823. (December Term, 1866.)

[See same case under Clause 1, Rule 9.]

19. A citation with due return, or waiver by general appearance or otherwise, is indispensable to jurisdiction on appeal, even when the appeal is allowed and the record filed in time.

Alviso v. United States, 5 Wall. 824. (December Term, 1866.)

20. A writ of error will be dismissed which is made returnable to a day different from the return day fixed by law as the day when the term commences.

Agricultural Co. v. Pierce Co., 6 Wall. 246. (December Term, 1867.)

21. Where a citation in an appeal from California was in fact signed, served, and filed in the clerk's office, and the building containing his office was partially destroyed by fire, occasioning great confusion and some loss of records, an appeal dismissed at a former term for want of a citation (*Alviso v. United States*, 5 Wall. 824, Authority No. 19 under this Clause of Rule 8), was reinstated under the peculiar circumstances of the case.

Alviso v. United States, 6 Wall. 457. (December Term, 1867.)

22. According to the settled practice, if the writ of error is sued out before the first day of the term, it must be made returnable on the first day of the next term, and so as to the citation; and if sued out after, it must be made returnable the first day of the succeeding term. Both writ and citation must be served before the return day, the writ by filing it in the clerk's office, and the citation by serving it on the party, or his attorney or counsel. The omission to serve the citation before the return day is fatal, and when the writ is not sealed till after the commencement of the next term of the Supreme Court subsequent to the rendering of the judgment, it is too late for it to operate as a supersedeas, and it cannot be amended in that respect.

City of Washington v. Dennison, 6 Wall. 495. (December Term, 1867.)

23. An appeal allowed, or writ of error served, is essential to the exercise of appellate jurisdiction by the Supreme Court, and the Court will dismiss for want of jurisdiction a case where the record shows the case to have been brought to the court as on a writ of error *by agreement of parties, and without the issuing or service of such a writ.*

Washington County v. Durant, 7 Wall. 694.

(Stated in a note to have been decided at December Term, 1865.)

SUBSEQUENT TO THE ADOPTION OF GENERAL RULE 33 IN 1867.

24. Where it appears from the record that the Supreme Court has not acquired jurisdiction of a case for want of proper appeal or writ of error, it will be dismissed, although neither party ask it.

Edmonson v. Bloomshire, 7 Wall. 306. (December Term, 1868.)

[See same case under Clause 1, Rule 9.]

25. The court denied a motion to dismiss, where, by a clerical error, the writ of error was dated "December 2d, 1868," and was returnable to "the 3d Monday of December *next*," it appearing that the citation showed that it commanded the party to "be and appear at a Supreme Court of the United States on the 3d Monday of December *instant*, pursuant to a writ of error filed in the clerk's office, &c.," the Supreme Court holding that the writ was virtually amended by the citation.

McVeigh v. United States, 8 Wall. 640. (December Term, 1869.)

26. An appellant cannot have his appeal dismissed for want of a citation where the appellee is in Court, and makes no objection to the want of a citation; the cause was dismissed as the appeal was not allowed, and on other grounds.

Pierce v. Cox, 9 Wall. 786. (December Term, 1869.)

27. A case where there was a motion to dismiss an appeal. The appeal was duly obtained, a *supersedeas* bond approved, a citation signed, the record filed, and the cause docketed, but the record did not show a proper service of the citation, although it was a case where the service of a citation was necessary, as the appeal was taken out of term. The Supreme Court held that the omission of the service of a citation actually issued upon the allowance of an appeal before the first day of the term, did not avoid the appeal, but furnished a case where the Supreme Court might grant "summary relief" by imposing such terms upon the appellants, as, under the circumstances, might be legal and proper. As some attempts had been made to serve the citation, the Supreme Court ordered that the appeal be dismissed, unless the appellants caused a new citation, returnable on a day certain, to be issued and served before that day.

Dayton v. Lash, 94 U. S. 112. (October Term, 1876.)

28. A case where judgment below was rendered October 5th, 1878, and the October Term of the Supreme Court in 1878 commenced October 15th. A writ of error returnable on the "second Monday in October next" was sued out and served the day the judgment was rendered, and a citation returnable on the same day with the writ was duly signed and served before the first day of the term. A motion was granted that an order be entered allowing the plaintiff in error to amend the writ by inserting the third Monday of the present term as the return day in lieu of the "second Monday in October," and requiring him to cause a new citation, returnable on

the first Monday in the following May, to be issued and served on the defendant in error.

National Bank v. Bank of Commerce, 99 U. S. 608. (October Term, 1878.)

29. A case where the record showed the allowance of an appeal when the appellees were present by their solicitors, but at a term subsequent to the rendition of the decree, and therefore, under the practice, a citation was necessary to bring the appellees into the Supreme Court. The case was docketed promptly in the Supreme Court at the term to which the appeal was returnable, and the Supreme Court, stating that the appellants might well have supposed that a citation would be waived, did not dismiss the appeal absolutely, but applied the rule acted upon in *Dayton v. Lash*, 94 U. S. 112 (Authority No. 27 under this Clause of Rule 8), and granted "summary relief" by imposing terms upon the appellants.

Railroad Co. v. Blair, 100 U. S. 661. (October Term, 1879.)

30. A case where the so-called writ of error was signed by the clerk and bore the seal of the Supreme Court of Louisiana, and was issued in the name of and bore the *teste* of the chief justice of said Supreme Court. The Supreme Court of the United States held that it had no jurisdiction of the case, as no writ of error had ever been issued. Reference is made to the ninth section of the Act of May 8th, 1792, c. 36, 1 Stat. at Large, 278, and to §§ 1004 and 1005 of the Revised Statutes, and, after reviewing the characteristics of the writ, the Supreme Court stated that it had not a single requisite of a writ of the Supreme Court, and that as there was nothing which even purported to be a writ from the Supreme Court, there was nothing to amend; that if they should permit the parties to change the seal or the title or to do everything else in the way of amendment which § 1005 of the Revised Statutes allows, there would be no writ, for nothing was done either in the name of the President or under the authority of the United States.

Bondurant, Tutrix, v. Watson, 103 U. S. 278 (280). (October Term, 1880.)

[See this case under Clause 1, Rule 5, and for the Act of Congress of May 8th, 1792, 1 Stat. at Large, 278, and §§ 1004 and 1005 of the Revised Statutes, see Statutes under Clause 1, Rule 8.]

31. An appeal dismissed for want of jurisdiction, as the appellee had not appeared and had never been served with a citation, and it was a case where a citation was necessary.

Haskins v. St. Louis & S. E. R. R. Co., 109 U. S. 106. (October 29th, 1883.)

[See same case under Rule 29.]

32. A case where leave was granted to amend the writ of error in cer-

tain particulars, and *Bondurant, Tutrix, v. Watson*, 103 U. S. 278 (Authority No. 30 under this Clause of Rule 8), distinguished.

The Texas & Pacific Railway Co. v. Kirk, 111 U. S. 486.

[See same case more fully cited under Clause 1, Rule 5, and Clause 5, Rule 6.]

6. The record in cases of admiralty and maritime jurisdiction, when under the requirements of law the facts have been found in the court below, and the power of review is limited to the determination of questions of law arising on the record, shall be confined to the pleadings, the findings of fact and conclusions of law thereon, the bills of exceptions, the final judgment or decree, and such interlocutory orders and decrees as may be necessary to a proper review of the case.

HISTORY.

With the exception of some immaterial verbal changes this Clause is the same as an amendment to General Rule 8 as contained in the Revision of May 1st, 1871, promulgated May 2d, 1881, 103 U. S. xiii. For this Clause in the Revision of 1884, see 108 U. S. 577.

FEDERAL STATUTES.

See the Federal Statutes cited under Clause 1, Rule 8, and, as more especially applicable to this Clause, the following Statutes thereunder cited:

Sec. 692 Revised Statutes (Second Edition), 129, and Acts of Congress thereunder cited under Clause 1, Rule 8.

Sec. 695 Revised Statutes (Second Edition), 129, and Acts of Congress thereunder cited under Clause 1, Rule 8.

“Sec. 698. Upon the appeal of any cause in equity, or of admiralty and maritime jurisdiction, or of prize and no prize, a transcript of the record, as directed by law to be made, and copies of the proofs, and of such entries and papers on file as may be necessary on the hearing of the appeal, shall be transmitted to the Supreme Court: *Provided*, That either the court below or the Supreme Court may order any original document or other evidence to be sent up, in addition to the copy of the record, or in lieu of a copy of a part thereof. And on such appeals no new evidence shall be received in the Supreme Court, except in admiralty and prize causes.”

Revised Statutes (Second Edition), § 698, p. 130; Act of Congress of 3d March, 1803, ch. 40, sec. 2, 2 Stat. at Large, p. 244; Act of Congress of 26th February, 1853, ch. 80, sec. 1, 10 Stat. at Large, 163; Act of Congress of 30th June, 1864, ch. 174, sec. 13, 13 Stat. at Large, 310; Act of Congress

of 7th April, 1874, ch. 80, sec. 2, 18 Stat. at Large, 27 (Relating to Territorial Courts and Appeals therefrom).

“Sec. 750. In equity and admiralty causes, only the process, pleadings, and decree, and such orders and memorandums as may be necessary to show the jurisdiction of the court and regularity of the proceedings, shall be entered upon the final record.

Revised Statutes (Second Edition), § 750, p. 141; Act of Congress of 26th February, 1853, ch. 80, sec. 1, 10 Stat. at Large, 163.

Sec. 1006 Revised Statutes (Second Edition), 188, and Acts of Congress thereunder cited under Clause 1, Rule 8.

Sec. 1009 Revised Statutes (Second Edition), 188, and Acts of Congress thereunder cited under Clause 1, Rule 8.

Sec. 1012 Revised Statutes (Second Edition), 189, and Acts of Congress thereunder cited under Clause 1, Rule 8.

Sec. 4636 Revised Statutes (Second Edition), 902, and Acts of Congress thereunder cited under Clause 1, Rule 8.

“That the circuit courts of the United States, in deciding causes of admiralty and maritime jurisdiction on the instance-side of the court, shall find the facts and the conclusions of law upon which it renders its judgments or decrees, and shall state the facts and conclusions of law separately. And in finding the facts, as before provided, said court may, upon the consent of the parties who shall have appeared and put any matter of fact in issue, and subject to such general rules in the premises as shall be made and provided from time to time, impanel a jury of not less than five and not more than twelve persons, to whom shall be submitted the issues of fact in such cause, under the direction of the court, as in cases at common law. And the finding of such jury, unless set aside for lawful cause, shall be entered of record, and stand as the finding of the court, upon which judgment shall be entered according to law. *The review of the judgments and decrees entered upon such findings by the Supreme Court, upon appeal, shall be limited to a determination of the questions of law arising upon the record, and to such rulings of the Circuit Court, excepted to at the time, as may be presented by a bill of exceptions, prepared as in actions at law.*”

Act of Congress of 16th February, 1875, ch. 77, sec. 1; 18 Stat. at Large, 315.

AUTHORITIES.

1. A case which, having been once up for consideration before the Supreme Court, was remanded for a finding of the facts and the conclusions of law, required by the “Act to facilitate the disposition of cases in the Supreme Court of the United States, and for other purposes” (18 Stat. at Large, 315), which went into effect May 1st, 1875, and where the

Circuit Court had since complied with the requirements of the statute, and made its return stating the facts and conclusions of law separately, and accompanying the return was a bill of exceptions, being a part of the record.

The "Abbotsford," 98 U. S. 440. (October Term, 1878.)

2. This Clause of Rule 8 was first promulgated by the Supreme Court in a cause where a motion was made to strike from the transcript the depositions and oral testimony taken in the progress of the cause in the several courts below. The Supreme Court denied the motion, referring to sec. 698 of the Revised Statutes, which provides that in appeals of any cause of admiralty and maritime jurisdiction a transcript of the record shall be transmitted to the Supreme Court, "and copies of the proofs, and of such entries and papers on file as may be necessary on the hearing of the appeal," and stated that while sec. 1 of the Act of February 16th, 1875, c. 77 (18 Stat. at Large, 315), limited the review by the Supreme Court of the judgments and decrees on the instance side of courts of admiralty and maritime jurisdiction to the questions of law arising on the record, and to such rulings of the court below excepted to at the time, as might be presented by a bill of exceptions, and required the court below to find the facts, no change had been made in the law prescribing what should be included in the transcript sent to the Supreme Court on an appeal. The Supreme Court then announced the General Rule.

The "Adriatic," 103 U. S. 730.

3. A motion for a writ of *certiorari* in an admiralty appeal, where there was nowhere in the record a statement of fact and conclusion of law such as is required by the Act of February 16th, 1875, ch. 77, 18 Stat. at Large, 315. The Supreme Court were unable to find from the record that the court below was ever asked to state its findings specially, and it was conceded that in fact no such statement was ever made. The Supreme Court stated that they supposed the real object of the motion was to have the case remanded to the Circuit Court, so that findings might be then stated and put into the record, as was done in the case of "*The Abbotsford*," 98 U. S. 440, which was held to be an exceptional case, depending on its own peculiar facts, and furnished no precedent for this motion. Under the circumstances of this case, the court below might reasonably infer that the appellants intended to rest their appeal on their bill of exceptions, being satisfied that upon the findings, which would be stated if required, the decree must necessarily be sustained; that to send the case back would be unjust to the court below as well as the parties, for a special statement of the facts now would involve a re-hearing; and that to justify the Supreme Court in returning a case for such a purpose, it must clearly appear that the omission was attributable to the fault or neglect of the court below and not to the parties.

The "S. S. Osborne," 104 U. S. 183. (October Term, 1881.)

[See same case under Rule 14.]

Rule 9.

DOCKETING CASES.

1. In all cases where a writ of error or an appeal shall be brought to this court from any judgment or decree rendered thirty days before the commencement of the term, it shall be the duty of the plaintiff in error or appellant to docket the case and file the record thereof with the clerk of this court within the first six days of the term; and if the writ of error or appeal shall be brought from a judgment or decree rendered less than thirty days before the commencement of the term, it shall be the duty of the plaintiff in error or appellant to docket the case and file the record thereof with the clerk of this court within the first thirty days of the term; and if the plaintiff in error or appellant shall fail to comply with this rule, the defendant in error or appellee may have the case docketed and dismissed, upon producing a certificate from the clerk of the court wherein the judgment or decree was rendered stating the case, and certifying that such writ of error or appeal has been duly sued out and allowed. And in no case shall the plaintiff in error or appellant be entitled to docket the case and file the record after the same shall have been docketed and dismissed under this rule, unless by order of the court.

HISTORY.

This Clause is the successor of Original General Rule 16, promulgated at February Term, 1803, and which provided:

“That where the writ of error issues within 30 days before the meeting of the court, the defendant [in error—these words in 1 Cranch, and 1 How.] is at liberty to enter his appearance, and proceed to trial; otherwise the cause must be continued.”

1 Cranch, xviii.; 1 Wheat. xvi.; 1 Pet. vii.; and 1 How. xxvi.

It is also the successor of a portion of General Original Rule 19, promulgated at February Term, 1806, which provided that,

“All causes, the records of which shall be delivered to the clerk on or before the sixth day of the term, shall be considered as for trial in the course of that term. Where the record shall be delivered after the sixth day of the term, either party will be entitled to a continuance.

“In all cases where a writ of error shall be a *supersedeas* to a judg-

ment, rendered in any Court of the United States (except that for the District of Columbia), at least thirty days previous to the commencement of any term of this Court, it shall be the duty of the plaintiff in error to lodge a copy of the record with the clerk of this Court within the first six days of the term; and if he shall fail so to do, the defendant in error shall be permitted, afterwards, to lodge a copy of the record with the clerk, and the cause shall stand for trial, in like manner as if the record had come up within the first six days; or he may, on producing a certificate from the clerk, stating the cause, and that a writ of error has been sued out, which operates as a *supersedeas* to the judgment, have the said writ of error docketed and dismissed. This rule shall apply to all judgments rendered by the Court for the District of Columbia, at any time prior to a session of this Court."

3 Cranch, 239; 1 Wheat. xvi.; 1 Pet. viii.; and 1 How. xxvi.; and referred to, apparently erroneously, in *Randolph v. Barbour*, 6 Wheat. 128, as Rule 20.

On March 14—February Term—1821, an Original General Rule was promulgated, which Rule is given as No. 32 in 6 Wheat. vi.; as No. 29 in 1 Pet. x.; and as No. 30 in 1 How. xxx. It was in these words:

"In all cases where a writ of error or an appeal shall be brought to this Court, from any judgment or decree rendered thirty days before [the term to which such writ of error or appeal shall be returnable], it shall be the duty of the plaintiff in error, or appellant, as the case may be, to docket the cause, and file the record thereof with the Clerk of this Court within the first six days of the term; [on failure to do which], the defendant in error, or appellee, as the case may be, may docket the cause, and file a copy of the record with the Clerk [and thereupon the cause shall stand for trial in like manner as if the record had been duly filed within the first six days of the term;] or at his option he may have the cause docketed and dismissed, upon producing a certificate from the Clerk of the Court wherein the judgment or decree was rendered, stating the cause, and certifying that such writ of error or appeal has been duly sued out and allowed."

At the January Term, 1835, another Original General Rule, No. 43, 9 Pet. vii.; 1 How. xxxv., was promulgated. Clause 1 of this Original General Rule differed from the Original General Rule last above quoted by substituting the following three phrases respectively for the words contained within the three sets of [] respectively, viz.:

1. "the commencement of the term."
2. "If he shall fail so to do."
3. "in which case it shall stand for argument at the term,"

and the Rule contained the following additional Clauses:

2. "No writ of error or appeal shall be docketed, or the record of the

cause filed by the plaintiff in error, or appellant, after the first six days of the term, except upon the terms that the cause shall stand for argument during the term, or be continued at the option of the defendant in error, or appellee. But in no case shall the plaintiff in error, or appellant, be entitled to docket the cause and file the record, after the same shall have been docketed and dismissed in the manner provided for in the preceding rule, unless by order of the Court or with the consent of the opposite party.

"3. In all cases where the cause shall not be docketed and the record filed with the Clerk by either party until after thirty days from the commencement of the term, the cause shall stand continued until the next term."

At the December Term, 1853, Original General Rule No. 63 was promulgated, 16 How. ix. Its first Clause was, with the exception of some immaterial verbal changes, and with the exception that it contained at the end the words "or consent of the opposite party," the same as Clause 1 of the present General Rule 9. In the Revision of 1858, with the exception of some immaterial verbal changes, Clause 1, of General Rule 9, 21 How. vii., was the same as Clause 1 of the present General Rule 9, and so also was Clause 1 of General Rule 9 of the Revision of May 1st, 1871. For this Clause in the Revision of 1884, see 108 U. S. 577.

FEDERAL STATUTES.

See *generally* the Statutes cited under Rule 8, and *especially*

"Sec. 999. When the writ is issued by the Supreme Court to a circuit court, the citation shall be signed by a judge of such circuit court, or by a justice of the Supreme Court, and the adverse party shall have at least thirty days notice; and when it is issued by the Supreme Court to a State court, the citation shall be signed by the Chief Justice, or judge, or chancellor of such court, rendering the judgment or passing the decree complained of, or by a justice of the Supreme Court of the United States, and the adverse party shall have at least thirty days' notice."

Revised Statutes (Second Edition), § 999, p. 187; Act of Congress of 24th September, 1789, ch. 20, sec. 22, 1 Stat. at Large, 84; Act of Congress of 5th February, 1867, ch. 28, sec. 2, 14 Stat. at Large, 386.

"Sec. 1002. Writs of error shall be prosecuted from the final judgments of district courts acting as circuit courts to the Supreme Court in the same manner as from the final judgments of circuit courts."

Revised Statutes (Second Edition), § 1002, p. 187; Act of Congress of 24th September, 1789, ch. 20, sec. 10, 1 Stat. at Large, 77.

"Sec. 1003. Writs of error from the Supreme Court to a State court in cases authorized by law, shall be issued in the same manner, and

under the same regulations, and shall have the same effect as if the judgment or decree complained of had been rendered or passed in a court of the United States."

Revised Statutes (Second Edition), § 1003, p. 187; Act of Congress of 24th September, 1789, ch. 20, sec. 25, 1 Stat. at Large, 85, 86; Act of Congress of 5th February, 1867, ch. 28, sec. 2, 14 Stat. at Large, 386.

"Sec. 1012. Appeals from the circuit courts and district courts acting as circuit courts, and from district courts in prize causes, shall be subject to the same rules, regulations, and restrictions as are or may be prescribed in law in cases of writs of error."

Revised Statutes (Second Edition), § 1012, p. 189; Act of Congress of 3d March, 1803, ch. 40, sec. 2, 2 Stat. at Large, 244; Act of Congress of 30th June, 1864, ch. 174, sec. 13, 13 Stat. at Large, 310.

"Sec. 1013. Where appeal is duly taken by both parties from the judgment or decree of a circuit or district court to the Supreme Court, a transcript of the record filed in the Supreme Court by either appellant may be used on both appeals, and both shall be heard thereon in the same manner as if records had been filed by the appellants in both cases.

Revised Statutes (Second Edition), § 1013, p. 189; Act of Congress of 6th August, 1861, ch. 61, sec. 1, 12 Stat. at Large, 319.

AUTHORITIES.

[NOTE.—As many of the authorities cited under Rule 8 are intimately connected with the authorities cited under this Clause, an examination of the authorities cited both under Rule 8 and under this Clause will be useful in the preparation of a brief on questions arising under either Rule 8, or this Clause of Rule 9.]

1. The rule does not apply to a case where the transcript shall have been filed before the motion to dismiss.

Bingham v. Morris, 7 Cranch, 97. (February Term, 1812.)

2. Where an appeal was taken from the Circuit Court to the Supreme Court in an equity suit, but was not prosecuted, it was dismissed upon the production of a certificate from the court below, that the appeal had been taken and not prosecuted, the Supreme Court stating that the case was within the spirit of the then 20th Rule (19th? See History of this Clause) of Court, although that Rule applied in terms only to writs of error.

Randolph v. Barbour, 6 Wheat. 128. (February Term, 1821.)

3. The spirit of the then 20th (19th? See History of this Clause) Rule declared to apply also to an appeal in an admiralty suit, and the appeal

was dismissed as in *Randolph v. Barbour*, 6 Wheat. 128 (Authority No. 2 under this Clause of Rule 9) and under similar circumstances.

The Jonquille, 6 Wheat. 452. (February Term, 1821.)

4. Where an appeal was dismissed by reason of the appellant having omitted to file a transcript of the record within the requisite time, it was held that an official certificate of the dismissal could not be given by the clerk of the Supreme Court during the term, as under the practice the appellants had a right during the same term to file the transcript with the clerk, and move to have the appeal reinstated, and that to allow such a certificate would be to prejudice such a motion.

Bank of the United States v. Swan, 3 Pet. 68. (January Term, 1830.)

5. An appeal was dismissed, the appellants having failed to lodge a transcript of the cause with the clerk.

Veitch v. The Farmers' Bank of Alexandria, 6 Pet. 777. (January Term, 1832.)

6. Motion to quash a writ of error denied, because defendant in error might have availed himself of the benefit of the then 29th Rule of the Supreme Court (1 Pet. x.) which gave him the right to docket and dismiss the cause.

Pickett's Heirs v. Legerwood, 7 Pet. 144. (January Term, 1833.)

[See same case under Clause 5, Rule 8.]

7. Held, that the rule for docketing and dismissing causes had never been applied to any cases where, before the motion was made, the cause had been actually placed on the docket, and also that where, under such circumstances, with a motion to docket a motion was contemporaneously made to dismiss, the cause was allowed to be docketed, the usual bond for clerk's fees being given.

Owings v. Lessee of Tiernan, 10 Pet. 24. (January Term, 1836.)

[See same case under Clause 1, Rule 10.]

8. Where the plaintiffs in error had lodged with the clerk of the Supreme Court a transcript of the record in the cause, but had failed to have the transcript filed, or the cause docketed in pursuance to the Rules, the defendant in error moved to docket and dismiss under the 19th Original General Rule of February Term, 1806 (See History of this Clause), and to dispense with the certificate required by said Rule, but to substitute the transcript for and as a certificate. The Supreme Court overruled the motion, being of the opinion that the defendant in error, to entitle himself to the benefit of the Rule, must produce the certificate of the clerk as required by the Rule.

Macomb v. Armistead, 10 Pet. 407. (January Term, 1836.)

9. A motion by defendant to docket and dismiss an appeal under the then 30th Rule (See History of this Clause) overruled, where a copy of

the record in due form had been lodged by the appellants with the clerk, but where the case had not been docketed, because the bond to secure the clerk's fees was not filed. The appellee declared entitled to have the case docketed and dismissed upon producing the certificate from the clerk of the Circuit Court as required by the then 30th Rule (See History of this Clause), stating the cause, and certifying that such appeal had been duly sued out and allowed.

West v. Brashear, 12 Pet. 101. (January Term, 1838.)

[See same case under Clause 1, Rule 10.]

10. Where the original writ of error, and also a citation signed by the clerk of the court, was produced by the defendant in error, in lieu of the certificate required by the Rule, it was *held* that the substance of the Rule had been complied with, and the case was dismissed.

Amis v. Pearle, 15 Pet. 211. (January Term, 1841.)

11. On a motion to reinstate a cause dismissed under the Rule, *Held*, that the motion to reinstate addresses itself to the sound discretion of the Supreme Court; that the judgment of dismissal is a judgment *nisi*, and may be stricken out at any time during the Court on motion, unless it appears that the omission to file the record and docket the case, at an earlier period of the Court has been injurious to the interests of the defendant in error.

Gwin v. Breedlove, 15 Pet. 284. (January Term, 1841.)

12. In order to entitle a party to have a case docketed and dismissed under this Rule, the certificate of the clerk of the court below must set forth an accurate titling of the case. It will not do to entitle the certificate in this manner; *Robert Holliday, et al., vs. Joseph N. Batson, et al.*; this is too vague and uncertain.

Holliday v. Batson, 4 How. 645. (January Term, 1846.)

13. The Rule as it existed in 1849 as Rule 43, 9 Pet. vii.; 1 How. xxxv. (See History of this Clause), stated, in a case where the appeal was from a decree entered less than thirty days prior to the commencement of the ensuing session of the Supreme Court, and where the transcript of the record was filed at the then term of the court. Motion to dismiss appeal overruled, as Rule 43 was *held* not to apply.

United States v. Boisdore's Heirs, 7 How. 658. (January Term, 1849.)

14. To entitle a party to docket and dismiss, under the 43d Rule (9 Pet. vii.; 1 How. xxxv. See History of this Clause), the certificate of the clerk of the court below must show that the judgment or decree of that court was rendered thirty days before the commencement of the term of the Supreme Court, if such be the fact; it is not enough for the certificate to state that final judgment was pronounced at, say, "April Term, 1850,"

because the April Term might have been prolonged until the meeting of the Supreme Court.

Rhodes v. The Steamship Galveston, 10 How. 144. (December Term, 1850.)

15. A motion on the part of the defendants in error, for a rule upon the plaintiff in error to file a copy of the record overruled.

Boyd v. Scott, 11 How. 292. (December Term, 1850.)

16. A motion to docket and dismiss overruled, because the certificate of the clerk of the court below stated the names of the parties as Joseph W. Clark *and others*, the Supreme Court holding that the titling of the case in the certificate was too vague and uncertain; the names of the "*others*" should be set out.

Smith v. Clark, 12 How. 21. (December Term, 1851.)

17. The Supreme Court refused to entertain a motion to dismiss an appeal which was not regularly entered on the docket, and which was taken from a decree in chancery, which decree was made by the court below during the sitting of the Supreme Court in term time, inasmuch as the appellant was not bound to file the record and enter the appeal on the docket until the next term.

Stafford v. The Union Bank of Louisiana, 16 How. 135 (139). (December Term, 1853.)

18. When the appellant fails to file a record within the time prescribed by the Rules, and the appellee files a copy of it, the appeal will be dismissed upon his motion.

United States v. Fremont, 18 How. 30. (December Term, 1855.)

19. The Supreme Court will not extend the time prescribed by the Rules within which to file the record, upon a certificate from the clerk of an inferior court that he cannot make out and have ready the record in time.

Sturgess v. Harrold, 18 How. 40. (December Term, 1855.)

20. Where an appeal is taken to the Supreme Court, the manuscript of the record must be filed and the case docketed at the term next succeeding the appeal.

Steamer Virginia v. West, 19 How. 182. (December Term, 1856.)

21. An omission to file a transcript of the record at the term next succeeding the issuing of the writ of error or the taking of the appeal is a fatal error, and the case must be dismissed for want of jurisdiction.

Carroll v. Dorsey, 20 How. 204. (December Term, 1857.)

[See same case under Clause 5, Rule 8.]

22. Although an appellee in a case from California be entitled to docket and dismiss under the 63d Rule 16, How. ix. (See History of this Clause),

because the appellant failed to file a transcript of the record within the first six days of the term, where the decree of the court below was rendered sixty days before the commencement of the term, a new appeal may be taken at any time within five years, or it may be that the record may be filed by the appellant at the same term at which a certificate or record has been filed by the appellee, and the case dismissed.

The period allowed by law for an appeal cannot be shortened by the Rules and practice of a court.

United States v. Pacheco, 20 How. 261. (December Term, 1857.)

[See same case under Clause 4 Rule 9.]

23. Where an appeal has been once docketed and dismissed under the Original 63d Rule, 16 How. ix. (See History of this Clause), the same case cannot be again docketed without a new appeal.

Rogers v. Law, 21 How. 526. (December Term, 1858.)

24. When the Supreme Court at the instance of the appellee has granted a motion to docket and dismiss a cause, and at a subsequent term becomes satisfied that no appeal was before it when it so docketed and dismissed the cause, it will vacate the order docketing and dismissing the cause, and recall the mandate which followed it.

A motion to docket and dismiss a cause, from the failure of the appellants to file the record within the time required by the rule of the Supreme Court, when granted, is not an affirmance of the judgment of the court below. It remits the case to the court below to have proceedings to carry that judgment into effect, if in the condition of the case there is nothing to prevent it.

United States v. Gomez, 23 How. 326. (December Term, 1859.)

25. Appeal dismissed because the record was not filed within the term next after the appeal was taken.

Mesa v. United States, 2 Black, 721. (December Term, 1862.)

26. An appeal allowed, or writ of error issued, must be prosecuted to the next succeeding term by filing the copy of the record; otherwise it will become void.

Castro v. United States, 3 Wall. 46. (December Term, 1865.)

[See same case under Clause 5 Rule 8, and under Clause 4 Rule 9.]

27. Where a writ of error was regularly sued out, returnable at the next term of the court thereafter, and was duly served, and a citation was also duly issued and served returnable at the same term, and the writ and citation with the record were returned to the Supreme Court and filed after the first six days of the term, and the cause docketed before the motion to dismiss was made, *held* that no motion to dismiss under this 9th Rule could be entertained.

Sparrow v. Strong, 3 Wall. 97. (December Term, 1865.)

28. After stating the general Rule to be that in cases of appeal the transcript of the record must be filed, and the case docketed at the term next succeeding the appeal, as laid down in *Castro v. United States*, 3 Wall. 46 (Authority No. 26 under this Clause of Rule 9), the Supreme Court held that the rule has necessarily some exceptions, as for instance where the appellant, having seasonably procured the allowance of the appeal, is prevented from obtaining the transcript by the fraud of the other party, or by the order of the court, or by the contumacy of the clerk, in such cases the Rule does not apply, provided it appears that the appellant was guilty of no laches, or want of diligence in his efforts to prosecute the appeal. *United States v. Gomez*, 3 Wall. 752. (December Term, 1865.)

29. Appeal dismissed because among other defects the record was not brought up at the next term of the Supreme Court.

Garrison v. Cass Co., 5 Wall. 823. (December Term, 1866.)

[See same case under Clause 5 Rule 8.]

30. An appeal or writ of error which does not bring to the Supreme Court a transcript of the record before the expiration of the term to which it is returnable, is no longer a valid appeal or writ, and although a prayer for an appeal, and its allowance by the court below, constitute a valid appeal, although no bond be given (the bond being to be given with effect at any time while the appeal is in force), yet if no transcript is filed in the Supreme Court at the term next succeeding the allowance of the appeal, it has lost its vitality as an appeal.

The vitality of the appeal cannot be restored by an order of the Circuit Court made afterwards, accepting a bond made to perfect the appeal, nor does a recitation in the citation, issued after said order, that the appeal was taken as of that date, revive the appeal or constitute a new one.

Edmonson v. Bloomshire, 7 Wall. 306. (December Term, 1868.)

[See same case under Clause 5 Rule 8.]

31. A case where the Supreme Court held it would have been proper to docket and dismiss if it had had appellate jurisdiction of the cause. As it had not such appellate jurisdiction, the motion was denied and the opinion of the Supreme Court certified to the Circuit Court for its information.

The "Alicia," 7 Wall. 571. (December Term, 1868.)

32. A writ of error dismissed on the ground that where a paper, which purported to be a transcript, contained only a blank form of a certificate of authentication, without the seal of the court below, or the signature of its clerk, the filing of such a paper was not the filing of the transcript at the next term of the Supreme Court after the issuing of the writ of error. Leave was, however, granted to the plaintiff in error to withdraw the record, but not for the purpose of having it perfected, and returned to the Supreme Court and placed on the docket, as if it had been regularly

filed. *Held* that the case could only be brought to the Supreme Court by a new writ of error.

Blitz v. Brown, 7 Wall. 693. (December Term, 1868.)

33. The fact that no transcript of the record is filed at the next term of the Supreme Court to that when a decree appealed from is made, is, in general, fatal to the appeal.

The "Lucy," 8 Wall. 307. (December Term, 1868.)

34. In a case where the Supreme Court decided that it had no jurisdiction of a cause transferred from a Circuit Court by consent of parties, where there had been no decree in the Circuit Court, yet as the record had been filed, and the cause docketed in the Supreme Court, it dismissed the cause for want of jurisdiction, affirming *The "Alicia,"* 7 Wall. 572 (Authority No. 31, under this Clause of Rule 9), where the record had not been filed, and where a motion to docket and dismiss was denied on the ground that the Supreme Court had not acquired jurisdiction.

The "Nonesuch," 9 Wall. 504. (December Term, 1869.)

35. An appeal dismissed on the ground of the defect of the title of the parties in the appeal, the title being "*William A. Freeborn & Co. v. The Ship 'Protector,'* and owners." The Supreme Court held that the writ could not be amended, and stated that no distinction in respect to the question could be made between the case of an appeal and a writ of error, and that the decisions directing the dismissal of a writ of error from the docket for want of jurisdiction, apply with equal force to a case of appeal. Citing as most nearly analogous, *Smith v. Clark*, 12 How. 21 (Authority No. 16, under this Clause of Rule 9), and *Holliday v. Baston*, 4 How. 645 (Authority No. 12, under this Clause of Rule 9).

The "Protector," 11 Wall. 82 (87). (December Term, 1870.)

[See same case under Clause 1, Rule 8.]

36. An appeal will be dismissed, where at the term to which it was returnable the transcript was, by reason of the laches of the appellant, not filed, or the cause docketed in the Supreme Court, and where some sufficient excuse is not given for the delay. The appellee, at any time before the hearing, may take advantage of the objection, or the Supreme Court, upon its own motion, may dismiss the appeal.

Grigsby v. Purcell, 99 U. S. 505. (October Term, 1878.)

37. A motion to docket and dismiss a case. The Supreme Court held that although the suit had abated by the death of the parties, the writ of error had become inoperative for want of prosecution long before it had abated, as the case was never docketed. *Grigsby v. Purcell*, 99 U. S. 505 (Authority No. 36, under this Clause of Rule 9), followed and approved.

The State, Ruckman Prosecutor, v. Demarest, Collector, 110 U. S. 400. (February 4th, 1884.)

[See same case under Clause 2, Rule 15.]

2. But the defendant in error or appellee may, at his option, docket the case and file a copy of the record with the clerk of the court; and if the case is docketed and a copy of the record filed with the clerk of this court by the plaintiff in error or appellant within the periods of time above limited and prescribed by this rule, or by the defendant in error or appellee at any time thereafter during the term, the case shall stand for argument at the term.

HISTORY.

This Clause appears to have had its origin in a portion of Clause 1 of Original General Rule No. 43, promulgated at January Term, 1835 (9 Pet. vii.; 1 How. xxxv. See History of Clause 1, Rule 9), viz., in the words, "If he" (the plaintiff in error or appellant, as the case may be) "shall fail so to do, the defendant in error or appellee, as the case may be, may docket the cause and file a copy of the record with the clerk, in which case it shall stand for argument at the term." This Clause appeared as Clause 2 of Original General Rule 63, promulgated at the December Term, 1853, 16 How. ix., with the exception of some immaterial verbal alterations, and with the exception of the substitution in the present Clause of the words "by the plaintiff in error or appellant within the periods of time above limited and prescribed by this rule, or by the defendant in error or appellee at any time thereafter during the term," for the words, "by either party, within the periods of time above limited and prescribed by this rule" in Clause 2 of Original General Rule 63. The present Clause is in substantially the same words as Clause 2 of General Rule 9 of the Revisions of 1858, 21 How. viii., and of May 1st, 1871. For this Clause of the Revision of 1884, see 108 U. S. 578.

FEDERAL STATUTES.

See statutes cited and referred to under Clause 1 of Rule 9.

AUTHORITIES.

1. Effect of defendant in error filing a copy of the record and docketing cause before the expiration of time allowed plaintiff in error to file record and docket cause, which he afterwards did within proper time. *Held*, the case made by defendant in error would be dismissed.

Hartshorn v. Day, 18 How. 28. (December Term, 1855.)

2. In this case the Supreme Court used the following language, viz.:

"It is suggested that a party wishing to move the dismissal of an appeal is obliged to await the arrival of the term to which the record ought to be returned, which occasions great delay. But as the case is

virtually in the possession and subject to the control of this court as soon as the appeal is effectively taken, we see no reason why the appellee should not at any time when the court is in session, apply to have the appeal dismissed, provided the question can be properly presented to the court. Of course the court would not hear the motion without having the record before it; but that could be procured and presented by the appellee, as is done where the appellant has failed to have the record filed in due time. In many cases the court might decline to hear the motion until the record were printed; but that could also be done by the appellee, if he desired to have a speedy hearing of the matter. Unless some unforeseen inconvenience should arise from the practice, we shall not refuse to hear a motion to dismiss before the term to which, in regular course, the record ought to be returned. It would be likely to prevent great delays and expense, and further the ends of justice."

Ex parte Russell, 13 Wall. 664 (671). (December Term, 1871.)

3. Upon the filing of the transcript of a record brought up by writ of error or appeal, the appearance of the counsel for the party docketing the case shall be entered.

HISTORY.

Original General Rule 16, promulgated at February Term, 1803, 1 Cranch, xviii.; 1 Wheat. xvi.; 1 Pet. vii.; and 1 How. xxvi., provided that "Where the writ of error issues within thirty days before the meeting of the court, the defendant in error is at liberty to enter his appearance, and proceed to trial; otherwise the cause must be continued." This provision did not appear in the Revision of December Term, 1858, 21 How., but by General Rules 16 and 17 provision was made for the cases of no appearance by either party when the case was called for trial, 21 How. xi. At December Term, 1867, General Rule 31 was promulgated, 6 Wall. v., the first portion of which was in these words:

"That upon the filing of the transcript of a record brought up by writ of error or appeal, the appearance of the counsel for the plaintiff in error or appellant shall be entered."

This provision of General Rule 31 appeared *totidem verbis* as Clause 3, of General Rule 9, of the Revision of 1871.

Clause 3 of the present General Rule 9 differs from the same Clause of the same General Rule of the Revision of 1871, by substituting the words "for the party docketing the case" in the present Clause 3 in lieu of the words "for the plaintiff in error or appellant" in Clause 3, of General Rule 9, of the Revision of 1871. For this Clause in the Revision of 1884, see 108 U. S. 578.

NOTE.—An appearance of counsel for plaintiff in error or appellant, by

a member of the bar of the Supreme Court, is required before a case can be docketed. See Circular Letter of Clerk of Supreme Court under Clause 1, Rule 10

AUTHORITIES.

1. The appellants contended, among other things, that the decree of the Circuit Court was erroneous because no authority was shown in the record from the Bank of the United States, authorizing the institution or prosecution of the suit. The Supreme Court *held* that it was unnecessary that an attorney or solicitor who prosecutes a suit for the Bank of the United States or other corporation, should produce a power of attorney under the corporate seal, saying that natural persons might appear in court either by themselves, or by their attorney, but that no man had a right to appear as the attorney of another, without the authority of that other; that in ordinary cases, the authority must be produced, because there is, in the nature of things, no *prima facie* evidence that one man is in fact the attorney of another; that the case of an attorney at law, an attorney for the purpose of representing another in court, and prosecuting or defending a suit in his name, is somewhat different; that the power must indeed exist, but its production has not been considered as indispensable; that certain gentlemen, first licensed by the government, are admitted by order of court, to stand at the bar, with a general capacity to represent all the suitors in the court; that the appearance of any one of these gentlemen in a cause, has always been received as an evidence of his authority, and no additional evidence, so far as the Supreme Court has been informed, has ever been required; and that this practice has existed since the first establishment of the courts, and no departure from it has been made in the courts of any State, or of the Union.

Osborn v. United States Bank, 9 Wheat. 738 (829). (October Term, 1824.)

2. No attorney or solicitor can withdraw his name, after he has once entered it on the record, without the leave of the court. And while his name continues there, the adverse party has a right to treat him as the authorized attorney or solicitor, and the service of a citation on him is as valid as if served on the party himself. And the Supreme Court presumes that no court would permit an attorney who had appeared at the trial with the sanction of the party, express or implied, to withdraw his name after the cause was fully decided, for if that could be done, it would be impossible to serve a citation where a party resided in a distant country, or his place of residence was unknown, and would in every case occasion unnecessary expense and difficulty, unless he lived at the place where the court was held, and so far from permitting an attorney to embarrass and impede the administration of justice, by withdrawing his name after trial and final decree, the Supreme Court thinks that it should regard any attempt to do so as open to just rebuke.

United States v. Curry, 6 How. 106 (111). (January Term, 1848.)

3. The Supreme Court states that this Clause of Rule 9 was adopted for the purpose of making some attorney of the court responsible for the due prosecution of the suit, and it was intended for something more than mere form, and that parties should understand that they are represented in the Supreme Court by counsel, and that notice to counsel is ordinarily equivalent to notice to themselves.

Hurley v. Jones, 97 U. S. 318. (October Term, 1877.)

[See same case under Rule 16, and Clause 9, Rule 26.]

4. Counsel who enter their appearance under the requirements of Rule 9, must understand that the Supreme Court will hold them responsible for all that such an entry implies, until they relieve themselves from the obligation they assume by substitution or otherwise.

Alvord v. United States, 99 U. S. 593. (October Term, 1878.)

[See same case under Rule 16.]

4. In all cases where the period of thirty days is mentioned in this rule, it shall be extended to sixty days in writs of error and appeals from California, Oregon, Nevada, Washington, New Mexico, Utah, Arizona, Montana, and Idaho.

HISTORY.

This provision was first embraced in Clause 3 of Original General Rule 63, promulgated at December Term, 1853, 16 How. ix. The provision in the said 63d Original General Rule was in the same language as the present Clause, except that it only embraced California, Oregon, Washington, New Mexico, and Utah. Clause 3 of General Rule 9 of the Revision of 1858, 21 How. viii., was in *totidem verbis* the same as Clause 3 of Original General Rule 63. On March 10th, 1865, General Rule 9 was amended, 2 Wall. viii., so as to extend the benefit of this provision to Nevada. By the Revision of May 1st, 1871, Clause 4, General Rule 9, the benefit of this provision was further extended to Arizona, Montana, and Idaho. For this Clause in the Revision of 1884, see 108 U. S. 578.

AUTHORITIES.

1. *United States v. Pacheco*, 20 How. 261. (December Term, 1857.)

[See points decided in same case under Clause 1, Rule 9.]

2. Appeal from California dismissed for non-compliance with this Clause.

Castro v. United States, 3 Wall. 46. (December Term, 1865.)

[See same case under Clause 1, Rule 9, and under Clause 5, Rule 8.]

3. In an appeal from California, where the record was not brought or



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filed within the first sixty days of the next term, and was not returned within the term, the appeal was dismissed.

German v. United States, 5 Wall. 825. (December Term, 1866.)

4. The Supreme Court refused to dismiss an appeal from the Territory of New Mexico, where a transcript of the record had not been filed in that Court until about two years after the end of the next term after the allowance of the appeal, it appearing in excuse for the delay, that an appeal had been properly prayed for in open court at the time that the judgment was rendered, and was then granted; but that the clerk, for some unexplained reason, had neglected to make an entry in his minutes of what was thus done; that the district attorney, on whose application the appeal was granted, not long after retired from office; that so soon as the omission of the clerk was brought to the notice of a new district attorney of the United States, succeeding, he made application to the court to amend the record so that it might appear in accordance with the facts, that the appeal had been prayed for at the term in which the judgment was rendered, and that the court granted the application and ordered an entry to be made *nunc pro tunc* of an appeal asked for and granted at the term when the judgment was given; the Supreme Court saying that the Government is obliged to trust the conduct of cases in remote parts of the country to subordinate agents, and that when the distance is as great from the seat of government as it is in this case, the difficulty of communication should be taken into view when considering the question of delay.

United States v. Vigil, 10 Wall. 423 (427.) (December Term, 1870.)

Rule 10.

PRINTING RECORDS.

1. In all cases the plaintiff in error or appellant, on docketing a case and filing the record, shall enter into an undertaking to the clerk, with surety to his satisfaction, for the payment of his fees, or otherwise satisfy him in that behalf.

HISTORY.

This Clause originated in an Original General Rule promulgated at February Term, 1808. It is given without any number in 4 Cranch, 537, and as Rule 20 in 1 Wheat. xvii. and 1 Pet. viii., and as Clause 1 of Rule 21, 1 How. xxvii. It was in these words:

“Ordered that all parties in this court, not being residents of the United States, shall give security for the costs accruing in this court, to be entered on the record.”

AUTHORITIES.

1. The Rule of Court for docketing and dismissing causes, passed at January Term, 1835, 9 Pet. vii. (See History of Clause 1, Rule 9), held never to have been applied to any cases, when before the motion was made, the cause has been actually placed on the docket. Under such circumstances, on a motion to docket, when a motion to dismiss was contemporaneously made, the cause was allowed to be docketed, the usual bond for the clerk's fees being given. Time was given to the plaintiff in error to file the bond.

Owings v. Lessee of Tiernan, 10 Pet. 24. (January Term, 1836.)

[See same case under Clause 1, Rule 9.]

2. Where a case has not been docketed, the appellee cannot use the record received from the Circuit Court and have the case docketed and dismissed under the Rule, on the ground that the appellant has failed to comply with the Rule requiring a bond to be given to the clerk before the case is docketed.

West v. Brashear, 12 Pet. 101. (January Term, 1838.)

[See same case under Clause 1, Rule 9.]

3. In a case where the clerk had declined filing the record or docketing the case until the bond prescribed by the then 37th Rule of Court (See History of this Clause, Rule 10) was given, a motion that the clerk be directed by the Supreme Court to docket the case as of the time when the transcript of record was received by him, on the filing of the requisite bond for costs, after a lapse of a year from the time the record was received by the clerk, during which time some sixty cases had been docketed, denied, although the bond, at the time of the motion, had been filed.

Van Rensselaer v. Watt's Executors, 7 How. 784. (January Term, 1849.)

4. Where, by reason of the failure of the appellant to enter into an undertaking to the clerk for the payment of his fees, or otherwise satisfy him in that behalf, the appeal has, upon motion of the appellee, been docketed and dismissed, the Supreme Court will not, on motion of the appellant, at a subsequent term, set aside the order of dismissal, and grant leave to file the record and docket the cause.

Selma, &c., R. R. Co. v. La. Nat. Bank, 94 U. S. 253. (October Term, 1876.)

5. At the October Term, 1880, a motion was made to dismiss a writ of error. A. sued out a writ of error returnable to the October Term, 1877. The return was duly made, the transcript of the record lodged in the clerk's office in September of that year, and a citation issued and served in time; but by an oversight of A.'s counsel, no fee-bond was given. The cause was not docketed. In September, 1878, the bond was filed and the cause then docketed, no motion to docket and dismiss having in the meantime been made; *Held*, That the motion to dismiss the writ of error then

made must be denied. The practice in this respect fully considered and the preceding cases examined.

Edwards v. United States, 102 U. S. 575. (October Term, 1880.)

6. A motion was made for leave to docket an appeal without security for the payment of the fee of 15 cents per folio, provided for by Clause 7, Rule 24. The appellants delivered to the clerk the requisite number of copies of the record in print. The Supreme Court granted the motion to the extent that the case might be docketed without security for such fee, but *held* that the printed copies could not be delivered to the justices or the parties for use on the final hearing or on any motion in the progress of the cause, unless the fee was paid when demanded by the clerk, in time to enable him to make his examinations and perform his other duties in connection with the copies.

Bean v. Patterson, 110 U. S. 401. (February 4th, 1884.)

[See same case under Clauses 2 and 5, Rule 10.]

2. The clerk shall cause an estimate to be made of the cost of printing the record, and of his fee for preparing it for the printer and supervising the printing, and shall notify to the party docketing the case the amount of the estimate. If he shall not pay it within a reasonable time, the clerk shall notify the adverse party, and he may pay it. If neither party shall pay it, and for want of such payment the record shall not have been printed when a case is reached in the regular call of the docket, after March 1, 1884, the case shall be dismissed.

HISTORY.

This Clause is entirely new. Prior to its adoption the Rules provided that the cost of printing the record should be charged to the Government in the expenses of the Supreme Court. The subsequent Clauses of this General Rule, with the exception of Clause 8, are modifications of Clauses 2 to 6 inclusive of General Rule 10 of the Revision of May 1st, 1871. The History of these modifications will be found under the appropriate subsequent Clauses. For this Clause in the Revision of 1884, see 108 U. S. 579. For the opinion of the Supreme Court, giving a History of the practice respecting the fees of the Clerk, and for the table of fees of the Clerk, see Clause 7, Rule 24, also 108 U. S. 1.

NOTE.—See the Circular Letter of the Clerk of the Supreme Court under Clause 1, Rule 10.

AUTHORITIES.

1. On the decision of a motion to use the printed record without paying the clerk's fee, where the clerk has not furnished the necessary copies to the justices because his fee for preparing the record for the printer and other services has not been paid by the appellant, although demanded, the Supreme Court, after stating that it is the first time the question has arisen, and that the practice has not, heretofore, been authoritatively announced, ordered that unless the appellant pay to the clerk within twenty days from the entry of the order what was due him for his fee, the appeal be dismissed for want of prosecution. If the payment is made, the clerk shall at once notify the opposite party, and the cause may thereafter be brought on for hearing under the then paragraph 7 of Rule 26 (now embraced in Clause 9 of Rule 26. See History under that Clause), as a case that has been passed under circumstances which do not place it at the foot of the docket.

Steever v. Rickman, 109 U. S. 74. (Decided October 23d, 1883, before the present Revision.)

[See same case under Clause 9, Rule 26.]

2. *Bean v. Patterson*, 110 U. S. 401. (February 4th, 1884.)

[For substance of decision in this case, see the same under Clauses 1 and 5, Rule 10.]

3. Upon payment by either party of the amount estimated by the clerk, twenty-five copies of the record shall be printed, under his supervision, for the use of the court and of counsel.

HISTORY.

Original General Rule 37 was promulgated at the January Term, 1831, 5 Pet. vii. (where it appears without number), also at p. 724 (where it appears numbered), and 1 How. xxxiii. Clause 2 was in these words:

"In all cases the clerk shall have fifteen copies of the records printed for the court, provided the Government will admit the item in the expenses of the court."

In the Revisions of December Term, 1858 (21 How. viii.), and of May 1st, 1871, Clause 2 of General Rule 10 was the same as Clause 2 of Original General Rule 37, with the exception of the substitution of the words "and the cost of printing shall be charged to the Government," in lieu of the words "provided the Government will admit the item."

On November 1st, 1875, Clause 2 of General Rule 10 was amended, 91 U. S. vii., by striking out the word "fifteen," and inserting in lieu thereof the word "twenty." No further change was made until the present Revision. For the opinion of the Supreme Court, giving a History of the

practice respecting the fees of the Clerk, see under Clause 7, Rule 24, and also 108 U. S. 1. For this Clause in the Revision of 1884, see 108 U. S. 579.

NOTE.—See the Circular Letter of the Clerk of the Supreme Court under Clause 1, Rule 10.

4. In cases of appellate jurisdiction the original transcript on file shall be taken by the clerk to the printer. But the clerk shall cause copies to be made for the printer of such original papers, sent up under Rule 8, Section 4, as are necessary to be printed; and of the whole record in cases of original jurisdiction.

HISTORY.

The first General Rule respecting the subject matter of this Clause was contained in Clause 3 of General Rule 10 of the Revision of December Term, 1858, 21 How. ix., and was in these words: "The clerk shall furnish copies for the printer," referring to the records to be printed for the Court. The same provision was in Clause 3 of General Rule 10 of the Revision of May 1st, 1871. On November 13th, 1882, 106 U. S. vii., Clause 3, of General Rule 10 was rescinded, and a new Clause 3 adopted, of which the portion relating to the papers which were to be furnished to the printer was as follows:

"The clerk shall take to the printer the original record in the office, except in cases prohibited by the rules. When the original cannot be taken, he shall furnish the printer with a manuscript copy."

For the opinion of the Supreme Court announcing this amendment and giving the reasons therefor, see under Clause 7, Rule 24, and also 108 U. S. 1. No further change was made in the Clause until the present Revision. The original papers sent up under Rule 8, section 4, referred to in this Clause, are such original papers as the presiding judge in any Circuit Court, or District Court exercising Circuit Court jurisdiction, deems necessary or proper to be inspected by the Supreme Court upon writ of error or appeal, and sends up accordingly. For this Clause in the Revision of 1884, see 108 U. S. 579.

5. The clerk shall supervise the printing, and see that the printed copy is properly indexed. He shall distribute the printed copies to the justices and the reporter, from time to time, as required, and a copy to the counsel for the respective parties.

HISTORY.

Clause 3 of Original General Rule 37, 5 Pet. vii. and 724, and 1 How. xxxiii., contained among others the following provision:

“In all cases the clerk shall deliver a copy of the printed record to each party.”

Clause 3 of General Rule 10 of the Revision of December Term, 1858, 21 How. ix., contained the following provision :

“The clerk * * * shall supervise the printing, and shall take care of and distribute the printed copies to the judges, the reporter, and the parties, from time to time, as required.”

Clause 5 of General Rule 10 of said Revision of 1858, contained as its first sentence the provision hereinbefore cited from Clause 3 of Original General Rule 37.

The same provisions in the same language were contained in Clauses 3 and 5 respectively, of General Rule 10 of the Revision of May 1st, 1871.

By the amendment of November 13th, 1882, 106 U. S. vii., whereby, among others, Clauses 3 and 5 of Rule 10 were rescinded, and new Clauses 3 and 5 were adopted, there followed in Clause 3, immediately after the portion relating to the papers which were to be furnished to the printer, which is quoted in full in the note to Clause 4 of this General Rule, the following words:

“He”(the clerk) “shall supervise the printing, and see that the printed copy is properly indexed. He shall take care of and distribute the printed copies to the judges, the reporter, and the parties, from time to time, as required.”

And the first sentence of Clause 5 of said General Rule 10 read as follows:

“In all cases the clerk shall deliver a copy of the printed record to each party without extra charge.”

For the opinion of the Supreme Court announcing the foregoing amendments and giving the reasons therefor, see under Clause 7, Rule 24, and also 108 U. S. 1. For this Clause in the Revision of 1884, see 108 U. S. 579.

AUTHORITIES.

1. The clerk is responsible to the court for the correctness and proper indexing of the printed copies of the record, for their presentation to the justices in the form, and of the size prescribed by the Rules, and for their delivery when required by the parties entitled thereto. As he must now account to the Treasury for the fees and emoluments of his office, he may demand payment in advance. Citing *Steever v. Rickman*, 109 U. S. 74 (Authority No. 1, under Clause 2, Rule 10, and Authority No. 4, under Clause 9, Rule 26). If the printing is actually done under his supervision, he may require the payment of the fee chargeable under the Rule before the printing is done. If the parties themselves furnish the printed copies, the fee must be paid, if demanded, in time to enable him to make the necessary examination, and be ready to deliver the copies to the parties or their counsel, and to the court when needed for any purpose in the progress of the cause. The fee is for the service specified in the 13th

item of Clause 7 of General Rule 24, and is indivisible; consequently, if the clerk performs any part of the service, he is entitled to collect the whole fee; and if the printed record is used at all, it must be examined by him to see if it conforms to the copy certified below and on file as the transcript of the record; so that if the printed copies are used for any purpose during the progress of the cause, the whole fee is chargeable.

Bean v. Patterson, 110 U. S. 401. (February 4th, 1884.)

[See this case under Clauses 1 and 2, Rule 10 and Clause 7, Rule 24.]

6. If the actual cost of printing the record, together with the fee of the clerk, shall be less than the amount estimated and paid, the amount of the difference shall be refunded by the clerk to the party paying it. If the actual cost and clerk's fee shall exceed the estimate, the amount of the excess shall be paid to the clerk before delivery of a printed copy to either party or his counsel.

HISTORY.

This Clause is entirely new.

NOTE.—For the table of fees of the Clerk, see Clause 7, Rule 24. See also the Circular Letter of the clerk of the Supreme Court under Clause 1, Rule 10.

7. In case of reversal, affirmance, or dismissal, with costs, the amount of the cost of printing the record and of the clerk's fee shall be taxed against the party against whom costs are given, and shall be inserted in the body of the mandate or other proper process.

HISTORY.

Clause 3 of Original General Rule 37 promulgated at January Term, 1831, 5 Pet. vii. and 724, and 1 How. xxxiii., contained, after the words, "In all cases the clerk shall deliver a copy of the printed record to each party" the following provision :

"And in cases of dismissal (except for want of jurisdiction), or affirmance, one copy of the record shall be taxed against the plaintiff; which charge includes the charge for the copy furnished him. In cases of reversal, and dismissal for want of jurisdiction, each party shall be charged with one-half the legal fees for a copy."

(It is worthy of note that MR. JUSTICE BALDWIN dissented from the Court on this 3d Clause, and the grounds of his dissent are spread out in

full in 5 Pet. 724). In the Revisions of December Term, 1858, 21 How. ix., and of May 1st, 1871, the following provisions appeared in General Rule 10:

"4. In each case, the clerk shall charge the parties the legal fees for but the one manuscript copy in that case.

"5. * * * And in cases of dismissal, reversal, or affirmance with costs, the fees for the said manuscript copy of the record shall be taxed against the party against whom costs are given, and which charge includes the charge for the copy furnished him.

"6. In cases of dismissal for want of jurisdiction, each party shall be charged with one-half the legal fees for a copy."

By an amendment promulgated November 13th, 1882, 106 U. S. vii., the above Clauses 4, 5 and 6 were rescinded, and in lieu thereof the following provisions were adopted:

"4. In cases where a manuscript copy of the record is not furnished the printer, the fee of the clerk for his service under the last preceding paragraph shall be one-half the rates now allowed by law for making a manuscript copy, and that shall be charged to the party bringing the cause into court, unless the court shall otherwise direct. When a manuscript copy is required to be made, full fees or a copy may be charged; but nothing in addition for the other services required.

"5. * * * In cases of dismissal, reversal, or affirmance, with costs, the fee allowed in the last paragraph shall be taxed against the party against whom costs are given. In cases of dismissal for want of jurisdiction, such fees shall be taxed against the party bringing the cause into court, unless the court shall otherwise direct."

For the opinion of the Supreme Court announcing the foregoing amendments and giving the reasons therefor, and for the table of fees of the Clerk, see under Clause 7, Rule 24, and also 108 U. S. 1. For this Clause in the Revision of 1884, see 108 U. S. 579.

FEDERAL STATUTES.

"There shall be taxed against the losing party in each and every cause pending in the Supreme Court of the United States or in the Court of Claims of the United States, the cost of printing the record in such case, which shall be collected, except when the judgment is against the United States, by the clerks of said courts respectively, and paid into the Treasury of the United States; but this shall only apply to records printed after the 1st of October next."

Act of Congress of 3d March, 1877, ch. 105, 19 Stat. at Large, 344.

8. Upon the clerk's producing satisfactory evidence, by affidavit or the acknowledgment of the parties or their sureties, of having served a copy of the bill of fees due by them, respectively, in this court, on such parties or their sureties, an attachment shall issue against such parties or sureties, respectively, to compel payment of the said fees.

HISTORY.

This Clause was in substance Clause 2 of an Original General Rule adopted at February Term, 1808. The Rule appears without number in 4 Cranch, 537; and in 1 Wheat. xvii. and xviii., and 1 Pet. viii., the two Clauses of the Original General Rule appear as Original General Rules 20 and 21 respectively, and the entire Rule appears as Rule 21, with two Clauses identical with the Clauses in the Original General Rule in 4 Cranch, 537, in 1 How. xxvii. In this prior Rule the word "costs" is used in place of "fees" wherever the latter now occurs, and in the Rule as given in 4 Cranch, 537, the words "and of their refusal to pay the same," appear before the words, "an attachment" in the present Clause. With the exception of some immaterial verbal changes this Clause is precisely the same as Clause 7 of General Rule 10 of the Revisions of December Term, 1858, 21 How. ix., and of May 1st, 1871. For this Clause in the Revision of 1884, see 108 U. S. 579.

NOTE.—For the table of fees of the Clerk, see Clause 7, Rule 24.

AUTHORITIES.

1. Each party must pay the Clerk his fees for services rendered them respectively, and the Clerk's remedy is by attachment. The party who requests a copy of the transcript of the record from the Clerk of the Supreme Court must pay for it, and cannot tax it in his costs.

Caldwell v. Jackson, 7 Cranch, 277. (February Term, 1812.)

Rule 11.

TRANSLATIONS.

Whenever any record transmitted to this court upon a writ of error or appeal shall contain any document, paper, testimony, or other proceedings in a foreign language, and the record does not also contain a translation of such document, paper, testimony, or other proceeding, made under the authority of the inferior court, or admitted to be correct, the record shall not be printed; but the case shall be reported to this court by the clerk, and the court will thereupon remand it to the inferior court, in order that a translation may be there supplied and inserted in the record.

HISTORY.

This Rule is in precisely the same language as Original General Rule 60, promulgated at December Term, 1851, 12 How. xi., and as General Rule 11 of the Revisions of December Term, 1858, 21 How. ix., and of May 1st, 1871. For this Rule in the Revision of 1884, see 108 U. S. 580.

Rule 12.

FURTHER PROOF.

1. In all cases where further proof is ordered by the court, the depositions which may be taken shall be by a commission, to be issued from this court, or from any circuit court of the United States.

HISTORY.

With the exception of some immaterial verbal changes, this Clause is the same as Original General Rule 25, promulgated at February Term, 1816, 1 Wheat. xix., and 1 How. xxviii., and given as Original General Rule 24 in 1 Pet. ix., and as Clause 1 of General Rule 12 of the Revisions of December Term, 1858, 21 How. ix., and of May 1st, 1871. For this Clause in the Revision of 1884, see 108 U. S. 580.

There was an Original General Rule promulgated at February Term, 1795, and given without number in 3 Dallas, 120. As it relates to the manner of taking testimony in certain cases, it may be of interest to the profession. It is as follows:

“Ordered that all evidence on motions for a discharge of prisoners upon bail, shall be by way of deposition and not *viva voce*.”

United States v. Hamilton, 3 Dallas, 17.

FEDERAL STATUTES.

“Sec. 698. Upon the appeal of any cause in equity, or of admiralty and maritime jurisdiction, or of prize or no prize, a transcript of the record, as directed by law to be made, and copies of the proofs, and of such entries and papers on file as may be necessary on the hearing of the appeal, shall be transmitted to the Supreme Court: *Provided*, That either the court below or the Supreme Court may order any original document or other evidence to be sent up, in addition to the copy of the record, or in lieu of a copy of a part thereof. *And on such appeals no new evidence shall be received in the Supreme Court, except in admiralty and prize causes.*”

Revised Statutes (Second Edition), § 698, p. 130; Act of Congress of 3d March, 1803, ch. 40, sec. 2, 2 Stat. at Large, 244.

AUTHORITIES.

NOTE.—The Authorities relating to new evidence in Prize and other Admiralty cases will be found under Clause 2 of this Rule.

1. In an equity suit no evidence can be looked into in the Supreme Court, which exercises an appellate jurisdiction, that was not before the Circuit Court; and the evidence certified with the record must be considered in the Supreme Court as the only evidence before the court below.

Holmes v. Trout, 7 Pet. 171. (January Term, 1833.)

[See same case under Rule 14.]

2. In an equity suit, after the appeal had been docketed in the Supreme Court, the appellants asked leave to send a commission to procure testimony, which it was alleged would fully explain certain circumstances, and offered to read *ex parte* depositions to the same effect. The Court refused both these applications, holding that in an appellate Court no new evidence could be taken or received without violating the best established rules of evidence and law.

Mitchel v. United States, 9 Pet. 711 (731). (January Term, 1835.)

[See same case under Rule 13, on question of objection raised for first time in the Supreme Court.]

3. In an equity cause the Supreme Court again states that appellate Courts can act on no evidence which was not before the court below, nor receive any paper which was not used at the hearing.

Boone v. Chiles, 10 Pet. 177 (208). (January Term, 1836.)

4. A case of original jurisdiction where a commissioner was appointed to take proof on certain questions referred to him by the Supreme Court.

The State of Pennsylvania v. The Wheeling & Belmont Bridge Co., 9 How. 647. (January Term, 1850.)

5. A case of original jurisdiction where commissions were directed to issue to examine witnesses upon application of either party, accompanied by the interrogatories, a copy whereof was directed to be served on the adverse party or his solicitor or counsel twenty days previous to such application, in order that the cross-interrogatories might be filed within said twenty days by the adverse party. The order provided that if counsel did not agree upon a commissioner, he might be named by the Chief Justice or by one of the Associate Justices of the Supreme Court; and that forthwith upon the return of the commission executed, the Clerk should open and file the same and cause the same to be printed for the use of the parties; that any exceptions to testimony might be taken at the final hearing; and that if exceptions were then taken to the competency of the testimony which the opposite party could remove by further proof, the

Supreme Court would reserve its decision and give time to the party to produce it.

The State of Florida v. The State of Georgia, 17 How. 478 (524). (December Term, 1854.)

6. The Supreme Court again states that after an appeal in equity it cannot receive new evidence, and also states that it cannot upon motion set aside a decree of the court below and grant a rehearing, but that if the court below should after the record was filed in the Supreme Court request a return thereof for the purpose of further proceedings in the cause, the Supreme Court would in a proper case and under suitable restrictions make the necessary order.

Roemer v. Simon, 91 U. S. 149. (October Term, 1875.)

7. No new evidence can be received in the Supreme Court in equity causes.

Blease v. Garlington, 92 U. S. 1, (4). (October Term, 1875.)

2. In all cases of admiralty and maritime jurisdiction, where new evidence shall be admissible in this court, the evidence by testimony of witnesses shall be taken under a commission to be issued from this court, or from any circuit court of the United States, under the direction of any judge thereof; and no such commission shall issue but upon interrogatories, to be filed by the party applying for the commission, and notice to the opposite party or his agent or attorney, accompanied with a copy of the interrogatories so filed, to file cross-interrogatories within twenty days from the service of such notice: Provided, however, That nothing in this rule shall prevent any party from giving oral testimony in open court in cases where by law it is admissible.

HISTORY.

This Clause is in precisely the same language as an Original General Rule promulgated at February Term, 1817, and given without number in 2 Wheat. vii., as Original General Rule No. 26 in 1 Pet. ix., as Original General Rule No. 27 in 1 How. xxix., and as Clause 2 of General Rule 12, of the Revisions of December Term, 1858, 21 How. x., and of May 1st, 1871. For this Clause in the Revision of 1884, see 108 U. S. 580.

FEDERAL STATUTES.

"Sec. 698. Upon the appeal of any cause in equity, or of admiralty and maritime jurisdiction, or of prize or no prize, a transcript of

the record, as directed by law to be made, and copies of the proofs, and of such entries and papers on file as may be necessary on the hearing of the appeal, shall be transmitted to the Supreme Court: *Provided*, That either the court below or the Supreme Court may order any original document or other evidence to be sent up, in addition to the copy of the record, or in lieu of a copy of a part thereof. *And on such appeals no new evidence shall be received in the Supreme Court, except in admiralty and prize causes.*"

Revised Statutes (Second Edition), § 698, p. 130; Act of Congress of 3d March, 1803, ch. 40, sec. 2, 2 Stat. at Large, 244.

"That the circuit courts of the United States, in deciding causes of admiralty and maritime jurisdiction on the instance-side of the court, shall find the facts and conclusions of law upon which it renders its judgments or decrees, and shall state the facts and conclusions of law separately. And in finding the facts, as before provided, said court may, upon the consent of the parties who shall have appeared and put any matter of fact in issue, and subject to such general rules in the premises as shall be made and provided from time to time, impanel a jury of not less than five and not more than twelve persons, to whom shall be submitted the issues of fact in such cause, under the direction of the court, as in cases at common law. And the finding of such jury, unless set aside for lawful cause, shall be entered of record, and stand as the finding of the court, upon which judgment shall be entered according to law. *The review of the judgments and decrees entered upon such findings by the Supreme Court, upon appeal, shall be limited to a determination of the questions of law arising upon the record, and to such rulings of the circuit court, excepted to at the time, as may be presented by a bill of exceptions, prepared as in actions at law.*"

Act of Congress of 16th February, 1875, ch. 77, sec. 1, 18 Stat. at Large, 351.

NOTE.—See Note at the end of the authorities under this Clause respecting this act.

AUTHORITIES,

IN PRIZE CASES ONLY.

1. Goods appearing by the ship's papers to be a consignment from alien enemies to American merchants, condemned *in toto* as prize, although further proof was offered that American merchants were jointly interested, and that they had a lien upon the goods, in consequence of advances made by them. Further proof on these points refused.

"*The Frances*" (*Thompson et al. Claimants*), 8 Cranch, 335. (February Term, 1814.)

2. Where the affidavits produced on the order for further proof are

positive, but their credibility is impaired by the non-production of letters mentioned in the affidavits, a second order for further proof will be allowed in the appellate court.

"*The Frances*" (*Graham's Claim*), 8 Cranch, 348. (February Term, 1814.)

3. A case where further proof was allowed.

"*The Frances*" (*Durham & Randolph's Claim*), 8 Cranch, 354. (February Term, 1814.)

4. Further proof inconsistent with that already in the case refused on the part of the claimant.

"*The Euphrates*," 8 Cranch, 385. (February Term, 1814.)

5. A case where further proof was ordered on several points not sufficiently clear.

"*The Mary*," 8 Cranch, 388. (February Term, 1814.)

6. Where parties were able to produce proof in the court below but did not do so, further time to take testimony was refused; but where the suppression of papers occurred by mistake or accident, and there were no other suspicious circumstances, further proof was allowed.

"*The St. Lawrence*," 8 Cranch, 434. (February Term, 1814.)

7. Further proof ordered with respect to all the circumstances of the capture.

"*The Grotius*," 8 Cranch, 456. (February Term, 1814.)

8. Further proofs refused on the ground that the Supreme Court did not believe that the evidence as it then stood was susceptible of any satisfactory explanation.

Cargo of Ship "Hazard" v. Campbell, 9 Cranch, 205 (209). (February Term, 1815.)

9. Further proof will be allowed by the Supreme Court, when the national character and proprietary interest of goods recaptured do not distinctly appear.

The Schooner "Adeline", 9 Cranch, 244. (February Term, 1815.)

10. Case where further proof was ordered, the facts not being sufficiently clear.

"*The Venus*," 1 Wheat. 112. (February Term, 1816.)

11. In cases of joint or collusive capture, the usual simplicity of the prize proceedings is necessarily departed from; and where, in these cases, there is the least doubt, other evidence than that arising from the captured vessel, or invoked from other prize causes, may be resorted to. Further proof ordered.

"*The George*," 1 Wheat. 408. (February Term, 1816.)

12. Order for further proof refused, the Supreme Court holding that if the property appears doubtful or the case suspicious, further proof may be granted according to the rules which govern the legal discretion of the Court, but if the parties have been guilty of gross fraud, or misconduct, or illegality, further proof is not allowed, and condemnation follows, the Supreme Court also saying that they are not satisfied that it would be a safe or convenient rule, unless under very special circumstances, to allow parties who have had the benefit of plenary proof in the court below, to have an order for further proof in the Supreme Court upon the same points, and much less would the Supreme Court be inclined to allow it in a case of pregnant suspicion, where the evidence must come from sources tainted with so many unwholesome personal interests, and so many infusions of doubtful credit.

"*The Dos Hermanos*," 2 Wheat. 76 (98). (February Term, 1817.)

13. A case where further proof was ordered, and that all examinations of witnesses be taken under commission according to the Rules of the Supreme Court.

"*The Fortuna*," 2 Wheat. 161. (February Term, 1817.)

14. If the court below deny an order for further proof when it ought to be granted, or allow it when it ought to be denied, and the objection is taken by the party, and appears on the record, the appellate Court can administer the proper relief, but, if evidence in the nature of further proof be introduced, and no formal order or objection appear on the record, it must be presumed to have been done by consent, and the irregularity is waived.

"*The Pizarro*," 2 Wheat. 227. (February Term, 1817.)

[See same case under Rule 13.]

15. It is the practice of the Supreme Court in prize causes, to hear the cause, in the first instance, upon the evidence transmitted from the Circuit Court, and to decide upon that evidence whether it is proper to allow further proof.

The claimant offering to read affidavits, as further proof, which had not been taken under a commission, they were rejected by the Supreme Court, the cause was continued to the next term, and the further proof ordered to be taken under a commission, according to the Rule of Court of that term. (See History of this Clause of Rule 12.)

"*The London Packet*," 2 Wheat. 371. (February Term, 1817.)

16. A case where it is declared that further proof will be ordered, as the facts did not appear to be sufficiently clear.

"*The Freundschaft*," 3 Wheat. 14 (48). (February Term, 1818.)

17. A witness offered to be examined, *viva voce*, in open court, in an instance cause, ordered to be examined out of Court.

"*The Samuel*," 3 Wheat. 77. (February Term, 1818.)

18. A case heard on further proof.

" *The San Pedro*," 3 Wheat. 78. (February Term, 1818.)

19. Case where further proof was permitted, the Supreme Court stating however, that it is a relaxation of the Rules of the prize court to allow time for further proof in a case where there has been concealment of material papers.

" *The Fortuna*," 3 Wheat. 237. (February Term, 1818.)

20. A case where further proof was ordered.

" *The Atalanta*," 3 Wheat. 409. (February Term, 1818.)

21. Upon an order for further proof, where the benefit of it was allowed to the captors, their attestations are clearly admissible evidence.

" *The Anne*," 3 Wheat. 435 (444). (February Term, 1818.)

22. Depositions, taken on further proof, in one prize cause, cannot be invoked in another.

" *The Experiment*," 4 Wheat. 84. (February Term, 1819.)

23. When the evidence obtained from the ship's books and papers is unsatisfactory, further proof may be admitted if the plaintiff has not violated good faith.

" *The Amiable Isabella*," 6 Wheat. 1 (77). (February Term, 1821.)

24. When an order for further proof is made, and the party disobeys, or neglects to comply with its injunctions, courts of prize generally consider such disobedience or neglect as fatal to his claim.

" *La Nereyda*," 8 Wheat. 108. (February Term, 1823.)

25. Cases of prize are usually heard, in the first instance, upon the papers found on board the vessel, and the examinations taken *in preparatorio*; and it is in the discretion of the court thereupon to make or not to make the order for further proof. But the claimant may move for the order, and show the grounds of the application by affidavit, or otherwise, at any time before the final decree is rendered. Such an order may also be made in the Supreme Court. The granting or refusal of the order is always in the discretion of the Supreme Court, and that discretion is controlled by the circumstances of each case. The order is made with great caution, because of the temptation it holds out to fraud and perjury. It is made only when the interests of justice clearly require it.

" *The Sally Magee*," 3 Wall. 451 (458). (December Term, 1865.)

26. An order for further proof in prize cases is always made with extreme caution, and only where the ends of justice clearly require it. A claimant forfeits the right to ask it, by any guilty concealments previously made in the case.

" *The Gray Jacket*," 5 Wall. 342 (368). (December Term, 1866.)

27. A case where a motion was made that all the depositions in the record, except those in *preparatorio*, should be stricken out or disregarded by the Supreme Court on appeal, for the reason that it did not appear that any order had been granted on behalf of either party to take further proof. The application was denied on the ground that it was made too late; that it should have been made in the court below as both parties had taken further proof very much at large bearing on the legality of the capture, without objection, and the inference was unavoidable that there must have been an order for the same, or if not, that the depositions were taken by mutual consent.

“*The Georgia*,” 7 Wall. 32 (38). (December Term, 1868.)

IN CASES OF ADMIRALTY AND MARITIME JURISDICTION OTHER THAN PRIZE.

28. After deciding the question of *value* upon the weight of the evidence, the Supreme Court will not continue a cause for the party to produce further evidence as to the *value*.

The United States v. The Brig “Union,” 4 Cranch, 215. (February Term, 1808.)

29. In cases of admiralty jurisdiction new evidence will be admitted in the Supreme Court, and for that purpose a commission may issue.

Brig “James Wells” v. The United States, 7 Cranch, 22. (February Term, 1812.)

30. The Supreme Court will grant a commission to take new evidence to be used in that Court in a case of admiralty jurisdiction.

Hawthorne, Claimant of Brig “Clarissa Claiborne” v. United States, 7 Cranch, 107. (February Term, 1812.)

31. After holding that prosecutions under the Non-Importation Laws are causes of admiralty and maritime jurisdiction, and that the proceeding may be by libel in the admiralty, the Supreme Court *holds* also that when the evidence is so contradictory and ambiguous as to render a decision difficult, the Court will order further proof in a revenue or instance cause.

“*The Samuel*,” 1 Wheat. 9. (February Term, 1816.)

32. The provision in the Judiciary Act of 1789, ch. 20, sec. 30, as to taking depositions *de bene esse*, held not to apply to cases pending in the Supreme Court, but only to cases in the District and Circuit Courts. Testimony by depositions can be regularly taken for the Supreme Court, only under a commission issued according to its Rules.

“*The Argo*,” 2 Wheat. 287 (289). (February Term, 1817.)

33. When further evidence is taken after an appeal to the Supreme Court under authority of the Act of Congress of March 3d, 1803 (2 Stat. at

Large, 244), under a commission issued in the usual form by the Clerk of the Circuit Court, and in the execution of which both parties have joined, it will be presumed that a proper order was entered, or if not entered, that it was waived by the act of the parties in suing out the commission and joining in its execution. The evidence taken thereunder was consequently admitted in the Supreme Court.

Rich v. Lambert, 12 How. 347 (353). (December Term, 1851.)

34. When a motion is made in the Supreme Court for a commission in an admiralty cause to take further evidence to be used in the Supreme Court on the hearing, some excuse satisfactory to the Court should be shown for the failure to examine the witnesses in the courts below, such as that the evidence was discovered when it was too late to procure such examination, or that the witnesses had been subpoenaed and failed to appear, and could not be reached by attachments, and the like.

"*The Mabey*," 10 Wall. 419. (December Term, 1870.)

35. The Supreme Court ordered a commission to take testimony in an admiralty cause where the application was made by the appellant, the owner of a steamer, to take the testimony of the master and mate of a schooner owned by the libellant, who had obtained a decree in the District and Circuit Courts against the steamer, for the purpose of proving an alleged agreement made with them by the libellant for the payment of a sum of money on the contingency, and in the event, that the case should be decided in favor of the libellant, and he should receive the damages claimed, the appellant claiming that he had brought himself within the rule laid down in the case of "*The Mabey*," 10 Wall. 419 (Authority No. 34, under this Clause of Rule 12), because he had learned of these two witnesses since the taking and perfecting of the appeal to the Supreme Court.

"*The Western Metropolis*," 12 Wall. 389. (December Term, 1870.)

36. Commissions under this Rule to take further evidence in the Supreme Court cannot be allowed as of course, as it would afford an inducement to parties to keep back their testimony in the subordinate courts, and the effect would be to convert the Supreme Court into a Court of original jurisdiction.

The ruling in the same case, "*The Mabey*," 10 Wall. 419 (Authority No. 34, under this Clause of Rule 12), referred to, and the rule established that the Supreme Court will entertain a second application for a commission in the same case.

Inasmuch, however, as the papers on which the second application was made failed to bring the application within the rule laid down in "*The Mabey*," 10 Wall. 419 (Authority No. 34, under this Clause of Rule 12), since it appeared that the witnesses sought to be examined were in Court on the trial, and that they were not examined because the party now asking for the commission agreed with a co-defendant (who was apparently as between themselves alone liable, he, the co-defendant,

having led the other defendant into the fault for which the libel had been filed that they would not introduce any testimony in the case, and as they did not introduce any testimony in the District Court, and did not appeal from the decree, a commission from the Supreme Court to take testimony was refused.

“*The Mabey*,” 13 Wall. 738. (December Term, 1871.)

NOTE.—Referring to the Act of Congress of 16th February, 1875, 18 Stat. at Large, 315, the first section of which Act is quoted in full under the FEDERAL STATUTES under this Clause, it may here be noted that it does not in terms repeal sec. 698 of the Revised Statutes (Second Edition), p. 130, also quoted in full under the FEDERAL STATUTES under this Clause, nor does it contain in terms any repeal of Acts, or part of Acts, inconsistent therewith. What the effect of the Act of 16th February, 1875, on § 698 of the Revised Statutes would be held to be, if an application were made to the Supreme Court for the taking of new evidence in an instance cause in admiralty has never been decided by the Supreme Court, nor has it been raised in any of the cases which have been brought to the Supreme Court after the said Act took effect on May 1st, 1875. Therefore the admiralty appeals decided by the Supreme Court after such Act took effect are not cited at length hereunder, but reference may be made to the following cases :

“*The Abbottsford*,” 98 U. S. 440. (October Term, 1878.)

“*The Benefactor*,” 102 U. S. 214. (October Term, 1880.)

“*The Adriatic*,” 103 U. S. 730. (October Term, 1880.)

“*The Annie Lindsley*,” 104 U. S. 185. (October Term, 1881.)

“*The Francis Wright*,” 105 U. S. 381. (October Term, 1881.)

“*The New Orleans*,” 106 U. S. 13. (October Term, 1882.)

Sun Mutual Ins. Co. v. Ocean Ins. Co., 107 U. S. 485. (October Term, 1882.)

“*The Adriatic*,” 107 U. S. 512. (October Term, 1882.)

Rule 13.

OBJECTIONS TO EVIDENCE IN THE RECORD.

In all cases of equity or admiralty jurisdiction, heard in this court, no objection shall hereafter be allowed to be taken to the admissibility of any deposition, deed, grant, or other exhibit found in the record as evidence, unless objection was taken thereto in the court below and entered of record; but the same shall otherwise be deemed to have been admitted by consent.

HISTORY.

With the exception of the substitution of the word “or” between the

words "equity" and "admiralty" for "and," this Rule is in precisely the same language as an Original General Rule promulgated at February Term, 1824, and given without number in 9 Wheat. iv., and given as Original General Rule 32 in 1 Pet. xi., and as Original General Rule 33 in 1 How. xxxi.; and, with the same exception, it is in precisely the same language as General Rule 13 of the Revisions of December Term, 1858, 21 How. x., and of May 1st, 1871. For this Rule in the Revision of 1884, see 108 U. S. 580.

AUTHORITIES.

1. If the court below deny an order for further proof when it ought to be granted, or allow it when it ought to be denied, and the objection is taken by the party, and appears on the record, the appellate Court can administer the proper relief, but, if evidence in the nature of further proof be introduced, and no formal order or objection appear on the record, it must be presumed to have been done by consent, and the irregularity is waived.

"The Pizarro," 2 Wheat. 227. (February Term, 1817.)

[See same case under Clause 2, Rule 12.]

2. In examining the admissibility of testimony in the Court above, the party excepting is to be confined to the specific objection taken at the trial.

Hinde's Lessee v. Longworth, 11 Wheat. 199 (206, 209). (February Term, 1826.)

3. An objection to depositions which was not taken below cannot be raised in the Supreme Court.

Mechanics' Bank of Alexandria v. Seton, 1 Pet. 299 (307). (January Term, 1828.)

4. It is an established rule founded on the soundest principle of justice, that a party shall not be permitted to reverse a judgment or decree, on an objection not made in the court below.

Harrison v. Nixon, 9 Pet. 483 (535). (January Term, 1835.)

5. An objection not raised in the court below cannot be raised in the Supreme Court for the first time.

Mitchel v. United States, 9 Pet. 711. (January Term, 1835.)

[See same case under Clause 1, Rule 12, on question of taking new evidence on appeal.]

6. When an issue is directed by a Court of Chancery, to be tried by a Court of Law, and in the course of the trial at law, questions are raised and bills of exceptions taken, these questions must be brought to the

notice and decision of the Court of Chancery which sends the issue ; if this is not done, the objection cannot be taken in an appellate Court of Chancery, neither can a master's report be objected to in the appellate Court unless exceptions to it have been filed in the court below under the Equity Rules.

Brockett v. Brockett, 3 How. 691. (January Term, 1845.)

7. Where a deed was objected to in the Circuit Court on the ground of fraud, but no specific grounds of objection were made, the Supreme Court cannot inquire into the correctness or incorrectness of the objection.

Thomas v. Lawson, 21 How. 331. (December Term, 1858.)

8. A case wherein one of the errors insisted upon was that there was a fatal variance between the facts found by the court and the case made by the plaintiff's petition. The Supreme Court in its opinion stated that it did not appear that any of the evidence offered by the plaintiffs in the court below was objected to by the defendants ; nor did it appear that any exception was taken when the court announced its findings, or subsequently, when the judgment was entered ; that it was in the power of the court below to permit the petition to be amended and a proper amendment would doubtless have been made if the objection had been stated ; that the objection was presented for the first time in the Supreme Court, and that under the circumstances it must be held to have been waived by the plaintiffs in error in the court below, and they are concluded by that waiver in the Supreme Court.

Railroad Company v. Lindsay, 4 Wall. 650 (656). (December Term, 1866.)

9. Exceptions to the report of a master in chancery cannot be taken for the first time in the Supreme Court.

Canal Company v. Gordon, 6 Wall. 561. (December Term, 1867.)

10. The objection cannot be made for the first time in the Supreme Court that the report of a referee finds certain facts inferentially and not directly.

Lumber Company v. Buchtel, 101 U. S. 633 (636). (October Term, 1879.)

Rule 14.

CERTIORARI.

No *certiorari* for diminution of the record will be hereafter awarded in any case, unless a motion therefor shall be made in writing, and the facts on which the same is founded shall, if not admitted by the other party, be verified by affidavit. And all motions

for such *certiorari* must be made at the first term of the entry of the case; otherwise the same will not be granted, unless upon special cause shown to the court, accounting satisfactorily for the delay.

HISTORY.

This Rule, with the exception of some immaterial verbal changes, and with the exception of the substitution of the word "must" for "shall" after the second "*certiorari*," and the word "will" for "shall" after the words "record" and "otherwise the same" respectively, is in the same language as an Original General Rule promulgated at February Term, 1824, and given without number in 9 Wheat. iv., as Rule 31 in 1 Pet. x., and as Original General Rule 32 in 1 How. xxxi. This Original General Rule appears unchanged as General Rule 14 of the Revisions of December Term, 1858, 21 How. x., and of May 1st, 1871. For this Rule in the Revision of 1884, see 108 U. S. 581.

FEDERAL STATUTES.

"Sec. 716. The Supreme Court and the circuit and district courts shall have power to issue writs of scire facias. They shall also have power to issue all writs not specifically provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the usages and principles of law."

Revised Statutes (Second Edition) § 716, p. 136 ; Act of Congress of 24th September, 1789, ch. 20, sec. 14, 1 Stat. at Large, 81.

See in connection with this the following sections of the Revised Statutes quoted at length under Rule 8, and the Acts of Congress referred to under each respectively.

Sec. 698 Revised Statutes (Second Edition), 130, quoted under Clauses 4 and 6, Rule 8.

Sec. 750 Revised Statutes (Second Edition), 141, quoted under Clause 6, Rule 8.

Sec. 997 Revised Statutes (Second Edition), 186, quoted under Clause 1, Rule 8.

Sec. 1012 Revised Statutes (Second Edition), 189, quoted under Clause 1, Rule 8.

See also, and especially in connection with this Rule, Clauses 1 and 3 of Rule 8.

AUTHORITIES.

1. A case where it became a question whether the return to a *certiorari*

(which was made in this instance by the clerk of the Circuit Court, under his hand, and the seal of the court) was within the Rule established relating to the return of writs of error (see Clause 1, Rule 8). The Supreme Court stated that by the Rule it was made the duty of the clerk of the Circuit Court to return the writ of error; that it was not returned unless all the proceedings in the cause accompanied it, and that the return to the present *certiorari* could only be considered as completing the duty imposed by the Original Rule in pursuance of a supplementary order by the Supreme Court.

Penmore v. The United States, 3 Dallas 357 (360), note. (August Term, 1797.)

2. In a case wherein it was proposed to remove the suits under consideration from the Circuit Court to the Supreme Court by writs of *certiorari*, the motion was denied, the Supreme Court *holding* that a *certiorari* can only issue as original process to remove a cause and change the venue when the superior Court is satisfied that a fair and impartial trial will not otherwise be obtained, and that it is sometimes used, as auxiliary process, where, for instance, diminution of the record is alleged, on a writ of error; that in such cases the superior Court must have jurisdiction of the controversy; and that as it did not appear that the Supreme Court had exclusive or original jurisdiction of the suits in question, the motion was denied.

Fowler v. Lindsay and Miller, 3 Dallas 411 (413). (February Term, 1799.)

3. A *certiorari* will be awarded upon a suggestion that the citation has been served but not sent up with the transcript of the record.

Field v. Milton, 3 Cranch, 514. (February Term, 1806.)

4. If the original judgment be reversed, the reversal of the dependent judgment on the "forthcoming bond" follows of course; but a special *certiorari* is necessary to bring up the execution upon which the bond was given, so as to show the connection between the two judgments.

Barton v. Petit, 7 Cranch, 288. (February Term, 1813.)

5. Where the clerk of the Circuit Court made return to a writ of *certiorari* with another record, and a motion was made to the Supreme Court for a new *certiorari*, upon the ground that the return ought to have been made by the judge of the court below, and not by the clerk, the motion was denied, the Supreme Court *holding* that according to the Rules and practice of the Court, a return made by the clerk was a sufficient return.

Stewart v. Ingle, 9 Wheat. 526. (February Term, 1824.)

6. Where the bill of exceptions states the fact of the entry of a judgment, but does not contain the judgment itself, the plaintiff may apply for a *certiorari* to bring up a proper record, or dismiss the present writ of error and proceed anew.

Doe v. Grymes, 1 Pet. 469. (January Term, 1828.)

7. If in certifying the record, a part of the evidence in the case has been omitted, it may be certified in obedience to a *certiorari*, but in such case it must appear from the record that the evidence was used, or offered to the Circuit Court.

Holmes v. Trout, 7 Pet. 171 (210). (January Term, 1833.)

[See same case under Clause 1, Rule 12, on question of what evidence the Supreme Court will look into.]

8. A *certiorari* will not be issued upon a suggestion that parts of the charge of the court below not appearing by the bill of exceptions to have been excepted to are not in the record. If the omission of a part of a charge which was in fact embodied in an exception, is a mere clerical error, the party will be entitled to a *certiorari* upon producing a copy of the exception properly certified, but in no case can the exception certified under seals of the judges of the Circuit Court be altered or amended.

Stimpson v. West Chester R. R. Co., 3 How. 553. (January Term, 1845.)

[See same case under Rule 4.]

9. After a case has been decided, and judgment pronounced by the Supreme Court, it is too late to move to open the judgment for the purpose of amending the bill of exceptions, upon the ground that material evidence which might have influenced the judgment of the Supreme Court was omitted in the bill. If there were any error or mistake in framing the exception, it might have been corrected by a *certiorari*, if the application had been made in due time and upon sufficient cause, but after the parties have argued the case upon the exception, and judgment has been pronounced, it is too late to re-open it.

Gayler v. Wilder, 10 How. 509. (December Term, 1850.)

10. In case an important paper is omitted from the record and which may be necessary for a correct decision of the case of the defendant in error, no counsel appearing for the defendant in error, the Supreme Court of its own motion will order the case to be continued and a *certiorari* to be issued to supply the omission, and return a full and correct transcript to the Supreme Court on or before the first day of the next term.

Morgan v. Curtenius, 19 How. 8. (December Term, 1856.)

11. The Supreme Court will award a *certiorari* on suggestion of diminution of record as late as the third term after the appeal is filed and docketed, if the delay be satisfactorily accounted for; but will not regard the *certiorari* as a reason for continuance, if the cause be reached before a return thereto.

Clark v. Hackett, 1 Black, 77. (December Term, 1861.)

12. The Supreme Court has no power to review by *certiorari* the proceedings of a military commission ordered by a general officer of the United States army, commanding a military department.

Ex parte Vallandigham, 1 Wall. 243. (December Term, 1863.)

13. The remedy of an appellee, if the transcript be incomplete, is a plain one and one of daily use. He should suggest diminution, and ask for a *certiorari*, which is readily granted when applied for in season.

United States v. Gomez, 1 Wall. 690 (701). (December Term, 1863.)

14. The Supreme Court will not take any action on the merits of a case, on a petition for a *certiorari*, even where the counsel for the petitioner produces a copy of the record which the opposing counsel admits to be a true copy. The case is regularly before the Court on the coming in of the return, and not till then will a motion for continuance be disposed of. *Certiorari* awarded.

Ex parte Dugan, 2 Wall. 134. (December Term, 1864.)

15. Case where a *certiorari* was refused on the ground of no deficiency in the record which needed to be supplied by *certiorari*.

McGuire v. The Commonwealth, 3 Wall. 382. (December Term, 1865.)

[See same case under Rule 16, on another point.]

16. Where a cause had been continued till the next term and counsel in California were unaware of the 14th Rule, a *certiorari* for diminution of record was allowed, special circumstances to take the case out of the operation of the Rule being shown.

Stearns v. The United States, 4 Wall. 1. (December Term, 1866.)

17. On an appeal from the Court of Claims, the Supreme Court refused a *certiorari* asked for to bring up conclusions to be deduced from the evidence before the court below, by having the findings made more complete on certain points indicated, stating that the writ of *certiorari* is properly used to bring up to the Court of Error, on an allegation of diminution, outbranches of the record, or other documents and writings in the court below which have not been previously certified or sent.

United States v. Adams, 9 Wall. 661. (December Term, 1869.)

18. A *certiorari* upon suggestion of diminution of a record was refused when the clerk had not appended to the transcript his certificate that it contained the full record, no contumacy of the clerk appearing. The plaintiff in error was permitted to withdraw the transcript to enable him to apply to the clerk of the court below to append thereto the necessary certificates.

Hodges v. Vaughan, 19 Wall. 12. (October Term, 1873.)

19. Deficiencies in a record may be supplied by *certiorari*.

The "Rio Grande," 19 Wall. 178. (October Term, 1873.)

20. When it appears for the first time in the argument of a cause that the existence of the judgment appealed from is not stated in the record, the Supreme Court of its own motion may allow the plaintiff in error a *certiorari*, and time to produce a certified copy of the judgment.

Sweeney v. Lomme, 22 Wall. 208. (October Term, 1874.)

21. Where the Court of Claims, during the pendency of an appeal in the Supreme Court, granted a new trial, the United States asked to have the appeal dismissed, and the appellee asked to have the cause retained, and that the proceedings under which the new trial was granted might be brought to the Supreme Court by *certiorari* for re-examination. The Supreme Court denied the motion for the *certiorari* and granted the motion to dismiss the appeal, *holding* that the Court of Claims by granting a new trial, which it had a right to do, had resumed control of the case and parties, and that the proceedings in which a new trial was obtained were now part of the record below, and that after judgment was finally rendered all the proceedings might be brought to the Supreme Court by appeal for review.

United States v. Young, 94 U. S. 258. (October Term, 1876.)

22. An application for a writ of *certiorari* was denied in an admiralty cause where there was nowhere in the record a statement of facts and conclusions of law such as is required by the Act of February 16, 1875, ch. 77, 18 Stat. at Large, 315, the Supreme Court holding that in order to justify it in returning the cause, it must appear that the omission to make the findings was attributable to the court below and not to the parties.

The "S. S. Osborne," 104 U. S., 183. (October Term, 1881.)

[See same case under Clause 6, Rule 8.]

23.—A case where the clerk of the court below having certified that the transcript sent up was "a true, full and perfect copy from the record of all the proceedings in the suit," the Supreme Court, in delivering its opinion, said that certainly the form of the certificate was sufficient for all the purposes of jurisdiction; that if, in point of fact, the certificate were not true, the remedy was by *certiorari* to supply deficiencies, and not by motions to dismiss; that to meet this view of the case, the appellants suggested diminution, and asked for a *certiorari* to bring up "the evidence taken before * * * William H. Rossington, as Examiner * * * remaining on file in the office of the clerk, constituting exhibits, depositions, and proofs used on the argument of the cause in the * * * Circuit Court;" that upon the face of the decree, it appeared that the case was disposed of on demurrer to the bill; that if that were the truth, the evidence on file was not necessary for the hearing of the appeal, but that as the record had not been printed in full, and the parties did not agree in their statements as to what it contained, the *certiorari* would be granted, reserving all further questions until the return was made.

Missouri K. & T. Railroad Co. v. Dinsmore, President, 108 U. S. 30. (October Term, 1882.),

Rule 15.

DEATH OF A PARTY.

1. Whenever, pending a writ of error or appeal in this court, either party shall die, the proper representatives in the personalty or realty of the deceased party, according to the nature of the case, may voluntarily come in and be admitted parties to the suit, and thereupon the case shall be heard and determined as in other cases; and if such representatives shall not voluntarily become parties, then the other party may suggest the death on the record, and thereupon, on motion, obtain an order that unless such representatives shall become parties within the first ten days of the ensuing term, the party moving for such order, if defendant in error, shall be entitled to have the writ of error or appeal dismissed; and if the party so moving shall be plaintiff in error, he shall be entitled to open the record, and on hearing have the judgment or decree reversed, if it be erroneous: Provided, however, That a copy of every such order shall be printed in some newspaper of general circulation within the State, Territory, or District from which the case is brought, for three successive weeks, at least sixty days before the beginning of the term of the Supreme Court then next ensuing.

HISTORY.

This Clause is, with the following exceptions, the same as an Original General Rule, promulgated March 8th, 1821, and given as Rule 31 in 6 Wheat. v.; as Rule 28 in 1 Pet. ix. and 1 How. xxix., and as Clause 1 of General Rule 15 of the Revisions of December Term, 1858, 21 How. x., and of May 1st, 1871. These prior Rules all contained the word "same" in place of the words "judgment or decree," in the present Clause, and the words, "at the seat of Government in which the laws of the United States shall be printed by authority," in place of the words, "of general circulation within the State, Territory, or District from which the case is brought," in the present Clause. By an amendment promulgated December 11th, 1879, 100 U. S. ix., the *proviso* portion of Clause 1 of the then General Rule 15 was amended by striking out the words "in which the laws of the United States shall be printed by authority," and inserting in lieu thereof the words, "of general circulation," so that the *proviso* read as follows:

"*Provided, however,* That a copy of every such order shall be printed in some newspaper at the seat of Government of general circulation for three successive weeks," etc. The present Clause makes an entire change in the manner of advertising. For this Clause in the Revision of 1884, see 108 U. S. 581.

FEDERAL STATUTES.

"Sec. 955. When either of the parties, whether plaintiff, or petitioner, or defendant, in any suit in any court of the United States, dies before final judgment, the executor or administrator of such deceased party may, in case the cause of action survives by law, prosecute or defend any such suit to final judgment. The defendant shall answer accordingly; and the court shall hear and determine the cause and render judgment for or against the executor or administrator, as the case may require. And if such executor or administrator, having been duly served with a *scire facias* from the office of the clerk of the court where the suit is depending, twenty days beforehand, neglects or refuses to become party to the suit, the court may render judgment against the estate of the deceased party, in the same manner as if the executor or administrator had voluntarily made himself a party. The executor or administrator who becomes a party as aforesaid, shall, upon motion to the court, be entitled to a continuance of the suit until the next term of said court."

Revised Statutes (Second Edition), § 956, p. 181; Act of Congress of 24th September, 1789, ch. 20 sec. 31, 1 Stat. at Large, 90.

"Sec. 956. If there are two or more plaintiffs or defendants, in a suit where the cause of action survives to the surviving plaintiff or against the surviving defendant, and one or more of them dies, the writ or action shall not be thereby abated; but, such death being suggested upon the record, the action shall proceed at the suit of the surviving plaintiff against the surviving defendant."

Revised Statutes (Second Edition), § 956, p. 181; Act of Congress of 24th September, 1789, ch. 20 sec. 31, 1 Stat. at Large, 90.

"Sec. 9. That whenever either party to a final judgment or decree which has been or shall be rendered in any circuit court has died or shall die before the time allowed for taking an appeal or bringing a writ of error has expired, it shall not be necessary to revive the suit by any formal proceedings aforesaid. The representative of such deceased party may file in the office of the clerk of such circuit court a duly certified copy of his appointment, and thereupon may enter an appeal or bring writ of error as the party he represents might have done. If the party in whose favor such judgment or decree is rendered has died before appeal taken or

writ of error brought, notice to his representatives shall be given from the Supreme Court, as provided in case of the death of a party after appeal taken or writ of error brought.

"Sec. 10. That all acts and parts of acts in conflict with the provisions of this are hereby repealed."

Act of Congress of 3d March, 1875, ch. 137, 18 Stat. at Large, 473.

AUTHORITIES.

1. In writs of error upon judgments already rendered, in personal actions, if the plaintiff in error die before assignment of errors, the writ abates at Common Law; but if after assignment of errors, the defendant may join in error, and proceed to get the judgment affirmed, if not erroneous, and may then revive it against the representatives of the plaintiff. But the writ does not abate by the death of the defendant in error whether it happened either before or after errors assigned; and personal representatives may not only be admitted voluntarily, but may be compelled by *scire facias* to appear.

Green v. Watkins, 6 Wheat. 260. (Decided March 8th, 1821.)

NOTE.—This decision was rendered before Original Rule 31, 6 Wheat. v. (See History of this Clause), was promulgated, and the Supreme Court in this case announced its intention of promulgating a General Rule on the subject, which it did.

2. In real actions, the death of the ancestor, without having appeared to the suit, abates the suit, and it cannot be revived and prosecuted against the heirs of the original defendant.

If the heirs be made parties by order of the court in which the suit is brought, and judgment is entered against them by default for want of a plea, upon a summons and count against the original defendant, they may sue out a writ of error, and reverse the judgment. *Green v. Watkins*, 6 Wheat. 620 (Authority No. 1 under this Clause of Rule 15), cited.

Macker's Heirs v. Thomas, 7 Wheat. 530. (February Term, 1822.)

3. Where the appellee had died after the commencement of the term, and the Supreme Court not knowing his decease had decided the case, after argument, the Court ordered the decree to be entered as of the first day of the term.

The President, etc., Bank of the United States v. Weisiger, 2 Pet. 481. (January Term, 1829.)

4. A plaintiff in error having died while the cause was held under advisement, judgment was directed to be entered *nunc pro tunc*, as on the first day of the term.

Clay v. Smith, 3 Pet. 411. (January Term, 1830.)

5. Where one of three parties, plaintiffs in a writ of error, dies, after the writ of error is issued, it is not necessary to make the heirs and represent-

atives of the deceased, parties to the writ of error; as the cause of action survives to the two other plaintiffs in error.

McKinney v. Carroll, 12 Pet. 66. (January Term, 1838.)

6. When one of two co-defendants has died since the commencement of a term, judgment may be entered against both defendants on a day prior to the death, *nunc pro tunc*, but if the death occurred before the commencement of the term, then upon the suggestion of the death before the term being entered of record, the cause of action surviving, judgment may be entered against the survivor.

McNutt v. Bland, 2 How. 1 (28). (January Term, 1844.)

7. Pending a writ of error to the Supreme Court, which was subsequently dismissed, the defendant in error died. A second writ of error, the defendant in error named therein being dead, was taken out, and a motion made in the Supreme Court to revive the writ of error by suggesting the death of the defendant in error and substituting the widow and heirs-at-law as parties to the record. *Held*, 1. That application should have been made to the court below for the purpose of reviving the suit in the name of the widow and heirs of the deceased, and then a writ of error could have regularly issued. The application made in the Supreme Court was irregular. 2. That if the court below should refuse the application, it would be necessary to issue the writ in the name of the representatives of deceased, in the usual way, serving on them the citation to appear at the next term.

McClane v. Boon, 6 Wall. 244. (December Term, 1867.)

8. Reference is made in the statement of the case and also in the opinion of the Supreme Court to the fact that pending an appeal to the Supreme Court the appellee had died, that his death was suggested of record, and that on motion leave was granted that the appearance of his administrator might be entered, and that said administrator was admitted as appellee in the case.

Noonan v. Bradley, 9 Wall. 394 (397). (December Term, 1869.)

2. When the death of a party is suggested, and the representatives of the deceased do not appear by the tenth day of the second term next succeeding the suggestion, and no measures are taken by the opposite party within that time to compel their appearance, the case shall abate.

HISTORY

This Clause is *totidem verbis* the same as the first Clause of Original

General Rule 61, promulgated at December Term, 1851, 13 How. v., and the same as Clause 2 of General Rule 15 of the Revisions of December Term, 1858, 21 How. xi., and of May 1st, 1871. There was a second Clause to Original General Rule 61, providing that the Rule should apply to cases then on the docket, as well as to cases thereafter brought, and that those then on the docket and falling within the Rule should abate on December 10th, 1852, unless, upon special cause shown, the Court should direct otherwise. For this Clause in the Revision of 1884, see 108 U. S. 582.

FEDERAL STATUTES.

See the Statutes quoted under Clause 1, Rule 15.

AUTHORITIES.

1. The death of the appellee having been suggested, the counsel for his executor offering to enter his appearance for the executor, the Supreme Court sustained a motion to dismiss the cause, as no person appeared to prosecute the suit for the appellants.

Hook v. Linton, 10 Pet. 107. (January Term, 1836.)

2. A writ of error declared abated in 1850, where the death of the plaintiff in error was suggested, and leave granted to make proper parties, at December Term, 1846, representatives not yet having been made.

Phillips v. Preston, 11 How. 294. (December Term, 1850, and prior to the adoption of Original General Rule 61, 13 How. 8.)

3. A bill entered abated as to one of the parties appellant, it appearing that his death was suggested at the December Term, 1851, while his legal representatives did not appear by the tenth day of the December Term, 1854, when the appeal was argued.

Barribeau v. Brant, 17 How. 43 (46). December Term, 1854.)

4. A motion to docket and dismiss the case having been made by one Durie, the successor in office of the defendant in error, it appeared that both the plaintiff and defendant in error had died after the writ of error had been sued out and the bond given, and before the case was docketed. The Supreme Court declared the suit abated by the death of the parties, and left the representatives of those in interest to proceed accordingly.

The State, Ruckman, Prosecutor, v. Demarest, Collector, 110 U. S. 400. (February 4th, 1884.)

[See same case under Clause 1, Rule 9.]

3. When either party to a suit in a circuit court of the United States shall desire to prosecute a writ of error or appeal to the Su-

preme Court of the United States, from any final judgment or decree, rendered in the circuit court, and at the time of suing out such writ of error or appeal the other party to the suit shall be dead and have no proper representative within the jurisdiction of the court which rendered such final judgment or decree, so that the suit cannot be revived in that court, but shall have a proper representative in some State or Territory of the United States, the party desiring such writ of error or appeal may procure the same, and may have proceedings on such judgment or decree superseded or stayed in the same manner as is now allowed by law in other cases, and shall thereupon proceed with such writ of error or appeal as in other cases. And within thirty days after the commencement of the term to which such writ of error or appeal is returnable, the plaintiff in error or appellant shall make a suggestion to the court, supported by affidavit, that the said party was dead when the writ of error or appeal was taken or sued out, and had no proper representative within the jurisdiction of the court which rendered said judgment or decree, so that the suit could not be revived in that court, and that said party had a proper representative in some State or Territory of the United States, and stating therein the name and character of such representative, and the State or Territory in which such representative resides; and, upon such suggestion, he may, on motion, obtain an order that, unless such representative shall make himself a party within the first ten days of the ensuing term of the court, the plaintiff in error or appellant shall be entitled to open the record, and, on hearing, have the judgment or decree reversed, if the same be erroneous: Provided however, That a proper citation reciting the substance of such order shall be served upon such representative, either personally or by being left at his residence, at least sixty days before the beginning of the term of the Supreme Court then next ensuing: And provided, also, That in every such case, if the representative of the deceased party does not appear by the tenth day of the term next succeeding said suggestion, and the measures above provided to compel the appearance of such representative have not been taken within the time as above required, by the opposite party, the case shall abate: And provided, also, That the said representative may at any

time before or after said suggestion come in and be made a party to the suit, and thereupon the case shall proceed, and be heard and determined as in other cases.

HISTORY.

This provision first appeared as an amendment to General Rule 15, promulgated January 12th, 1875, 20 Wall. xv. This amendment was substantially in the language of the present Clause, the principal changes being as follows :

The words "a Circuit Court" in the first line of this Clause taking the place of "the Circuit Courts" in the amendment, and the words "the Circuit Court" next following in this Clause taking the place of "said Circuit Courts" next following in the amendment ; the phrase "and may have proceedings on such judgment or decree superseded or stayed in the same manner" in the first sentence of the present Clause taking the place of the phrase "and may supersede or stay proceedings on such judgment or decree in the same manner" in the first sentence of said amendment, and the first word "term" in the second sentence in this Clause taking the place of the first word "court" in the second sentence of said amendment. For this Clause in the Revision of 1884 see 108 U. S. 582.

FEDERAL STATUTES.

See the Statutes quoted under Clause 1, Rule 15.

Rule 16.

NO APPEARANCE OF PLAINTIFF.

Where no counsel appears and no brief has been filed for the plaintiff in error or appellant, when the case is called for trial, the defendant may have the plaintiff called and the writ of error or appeal dismissed, or may open the record and pray for an affirmance.

HISTORY.

This Rule appears to have had its origin in a statement made by CHIEF JUSTICE MARSHALL in *Montalet v. Murray*, 3 Cranch. 249, February Term, 1806, where he "stated the practice of the Court to be, that where there is no appearance for the plaintiff in error, the defendant may have the plaintiff called, and dismiss the writ of error ; or may open the record, and pray for an affirmance." No similar statement of practice appears embodied in any Original General Rule in either 1 Wheat., or 1 Pet.

In 3 Pet. xvii., however, this statement of practice by CHIEF JUSTICE MARSHALL is given as an Original General Rule without number, and in a note it is stated that it, with other Rules then given, was omitted in 1 Wheat. and 1 Pet. because it was not regularly entered by the then Clerk of the Court at the time of its adoption. It appears, however, at the conclusion and as part of Original General Rule 19, 1 How. xxvii., and as General Rule 16 of the Revisions of December Term, 1858, 21 How. xi., and of May 1st, 1871, in substantially the same language as in the Original General Rule with the exception that the words "when the case is called for trial" were inserted after the words "when there is no appearance for the plaintiff in error" in the Original General Rule. The present General Rule extends the provisions of the previous General Rules on the subject to a case where no brief has been filed and where no counsel appears for the plaintiff in error, and to appeals as well as to writs of error. For this Clause in the Revision of 1884 see 108 U. S. 583.

AUTHORITIES.

1. See History of this Rule for the substance of the decision in this case. It is also stated in the report of the case that dismissal should be with costs.

Montalet v. Murray, 3 Cranch. 249. (February Term, 1806.)

2. A motion was made for leave to reinstate a cause which had been dismissed on a former day of the term, for want of appearance of the plaintiffs in error. At the first term, when the writ of error was filed, the Clerk of the Supreme Court had entered the appearance of the Attorney-General of the United States, according to the usual practice in such cases. The Attorney-General, while not objecting to the reinstatement, stated that he had intended to take an objection, at the time the suit was dismissed if any person had then appeared; that the citation for the writ of error was returnable to a day out of term, to wit: on the *first* Monday of January, 1828, instead of the *second* Monday of that year. The Supreme Court ordered the cause reinstated, and in their opinion stated that the practice had uniformly been, ever since the seat of government had been removed to Washington, for the Clerk to enter at the first term to which any writ of error or appeal was returnable, the appearance of the Attorney-General in every case to which the United States were a party, by entering his name on the docket; that this practice must have been known to every Attorney-General and had never been objected to; that it might be considered, therefore, as having an implied acquiescence on the part of the Attorney-General; although it was admitted that there was no evidence of any express assent. The Supreme Court also stated that they did not say that this practice would be conclusive against the Attorney-General, if he should at the first term withdraw such appearance, or move to strike it out, in order to take advantage of any irregularity in the service of process; but that if he let it pass for that term without objection, it was

conclusive upon him as to an appearance; that an appearance cured any defect in the service of process and that therefore the motion of the Attorney-General to dismiss the writ of error on the ground stated was overruled.

Farrar v. United States, 3 Pet. 459. (January Term, 1830.)

3. It is usual in the Supreme Court to grant leave to withdraw an appearance whenever asked, saving, however, all the rights of the adverse party. The Supreme Court cannot, however, require the calling of the plaintiff with a view to the dismissal of the writ of error. After the withdrawal of an appearance it is the right of the defendant in error under the 16th Rule to have the plaintiff called and the suit dismissed, or to open the record and pray an affirmance.

McGuire v. The Commonwealth, 3 Wall. 382. (December Term, 1865.)

4. A motion to reinstate a cause dismissed under the 16th General Rule denied. The appellant had been so unmindful of his interests that he did not know that the counsel, upon whom he relied for the presentation of his case, had died before the commencement of the then present term, and had been unable to attend to business on account of impaired health for a long time before his death. On denying the motion, the Supreme Court stated that in the crowded state of their docket, filled with cases from all parts of the United States, it was their duty to take special care that the necessary delays in disposing of their business are not added to by the neglect of counsel or parties; and that for this reason, the Rules requiring causes to be ready for hearing when reached are, and will continue to be, rigidly enforced.

Hurley v. Jones, 97 U. S. 318. (October Term, 1877.)

[See same case under Clause 3, Rule 9, and Clause 9, Rule 26.]

5. A motion to reinstate a cause dismissed under Rule 16 denied, the Supreme Court stating that the Rules of the Court requiring causes to be ready for hearing when reached are and will continue to be rigidly enforced.

Alvord v. United States, 99 U. S. 593. (October Term, 1878.)

6. An appeal dismissed under the 16th Rule was not reinstated, as the appellant had not excused himself for his default, and brought himself clearly within *Hurley v. Jones*, 97 U. S. 318 (Authority No. 4, under Rule 16), in which case the Supreme Court here says it announced its intention to enforce rigidly this salutary rule, and not to set aside defaults growing out of the neglect of counsel or parties, except for very good cause.

James v. McCormack, 105 U. S. 265. (October Term, 1881.)

Rule 17.

NO APPEARANCE OF DEFENDANT.

Where the defendant fails to appear, when the case is called for trial, the court may proceed to hear an argument on the part of the plaintiff and to give judgment according to the right of the case.

HISTORY.

The origin of this General Rule is found in Original General Rule 15, promulgated December 9th, 1801, 1 Cranch, xviii., 1 Wheat. xvi., 1 Peters, vii., 1 How. xxv., where the Rule is in these words:

“That in every cause when the defendant in error fails to appear, the plaintiff may proceed *ex parte*.”

With some immaterial verbal alterations, this Rule is the same as General Rule 17, as it appears in the Revisions of December Term, 1858, 21 How. xi., and of May 1st, 1871. For this Rule in the Revision of 1884, see 108 U. S. 583.

AUTHORITIES.

1. Proclamation was made in this cause “that any person having authority to appear for the State of New York is required to appear accordingly;” and no person appearing, it was ordered that unless the State appeared by the first day of the next term, or showed cause to the contrary, judgment would be entered by default against the said State.

Oswald, Administrator, v. State of New York, 2 Dallas, 415. (February Term, 1793.)

2. A similar order to the one made in *Oswald, Administrator, v. State of New York*, 2 Dallas, 415 (Authority No. 1, under Rule 17), was made in the case of

Chisholm, Executor, v. Georgia, 2 Dallas, 419. (February Term, 1793.)

3. Where the appearance of an attorney for the appellee has been improvidently entered the Supreme Court will permit the attorney to withdraw his appearance, as, under the Rules of the Court, it is generally of no importance to the appellant, whether an appearance for the appellee is or is not entered on the record, for if he is entitled to his appeal, and has prosecuted it to the Supreme Court according to law, the refusal or omission of the appellee to appear will not delay the trial, and a judgment against him will be as conclusive as if an appearance for him had been entered on the docket, and the case argued by his counsel. Such withdrawal of appearance, however, will not authorize a motion to dismiss for want of a citation, nor does the appearance preclude the party from moving to dismiss for want of jurisdiction or any other sufficient ground, except the want of a citation.

United States v. Yates, 6 How. 605. (January Term, 1848.)

Rule 18.

NO APPEARANCE OF EITHER PARTY.

When a case is reached in the regular call of the docket, and there is no appearance for either party, the case shall be dismissed at the cost of the plaintiff.

HISTORY.

This is the successor of Original General Rule 54, promulgated at January Term, 1850, 8 How. v. It reads there as follows:—

“*Ordered*, That where an appearance is not entered on the record for either the plaintiff or defendant on or before the second day of the term next succeeding that at which the case is docketed, it shall be dismissed at the costs of the plaintiff.”

At the December Term, 1851, Original General Rule 59 was adopted, 12 How. xi., which is, with the exception of some immaterial verbal changes, the same as the present General Rule 18. Original General Rule 54 was thereby rescinded. Original General Rule 59 appeared as General Rule 18 in the Revisions of December Term, 1858, 21 How. xi., and of May 1st, 1871. For this Rule in the Revision of 1884, see 108 U. S. 583.

AUTHORITIES.

1. A writ of error will be dismissed if no appearance has been entered on the docket for either party, and no counsel appear though both parties were called.

Rodford v. Craig, 5 Cranch, 289. (February Term, 1809.)

2. A case where the Supreme Court, construing Original General Rule 54 [See same under History of this Rule], *held* that it applied to cases docketed at the regular term, and not to an adjourned term; that it might happen that an adjourned term may be held immediately preceding the regular session; that this case was not docketed until after the close of the regular term of the Court, and was not, therefore, within the Rule. The motion to dismiss the case under this Rule was accordingly denied.

Larman v. Tisdale's Heirs, 11 How. 586. (December Term, 1850.)

Rule 19.

NEITHER PARTY READY AT SECOND TERM.

When a case is called for argument at two successive terms, and upon the call at the second term neither party is prepared to argue it, it shall be dismissed at the cost of the plaintiff, unless sufficient cause is shown for further postponement.

HISTORY.

This Rule is in precisely the same language as Original General Rule 55, promulgated April 24th, 1850, 8 How. vi., and as General Rule 19 of the Revisions of December Term, 1858, 21 How. xii., and of May 1st, 1871. For this Rule in the Revision of 1884 see 108 U. S. 583.

Rule 20.

PRINTED ARGUMENTS.

1. In all cases brought here on writ of error, appeal, or otherwise, the court will receive printed arguments without regard to the number of the case on the docket, if the counsel on both sides shall choose to submit the same within the first ninety days of the term; but twenty-five copies of the arguments, signed by attorneys or counsellors of this court, must be first filed.

HISTORY.

An Original General Rule similar to this Clause was promulgated as Rule 40 at the January Term, 1833, 7 Pet. iv. It was adopted for the convenience of counsel, and stated that it was adopted to save expense to parties, by enabling them to submit cases on printed arguments, but contained no limitation of time within which to submit, nor any provision that any copies of the argument be first filed. At the January Term, 1842, 16 Pet. viii., the Supreme Court announced an Original General Rule, which directed that printed arguments should not be received under Original General Rule 40, unless filed within forty days from the commencement of the Term, except in cases which were reached in the regular call of the docket. Original General Rule 40, without the above amendment, appears in 1 How. xxxv., and the amendment appears as Original General Rule 49, 1 How. xxxviii.

At the January Term, 1845, a new Original General Rule was adopted, providing that no printed or written argument be thereafter received un-

less the same shall be signed by an attorney or counsellor of the Supreme Court, 3 How. vi. (6). (NOTE. The signature of a firm name to a brief in the Supreme Court never has been, and is not now, sufficient.) At the same time by another Original General Rule, 3 How. vi. (6), the time within which to file the printed arguments under Original General Rule 40 was changed until the first Monday in February, in each and every Term, while the Supreme Court continued to meet on the first Monday in December, and the above Original General Rule 49, 1 How. xxxviii., was rescinded. On April 24th, 1850, the time to receive printed arguments under Original General Rule 40 was restricted to the first ten days of the Term, by Original General Rule 56, 8 How. vi.

In the Revision of December Term, 1858, 21 How. xii., Clause 1 of General Rule 20 is the same as the present Clause of General Rule 20, with this exception, that the words "within the first ninety days of the Term" appearing in the present Clause were not contained in Clause 1 of General Rule 20 of such Revision, and said Clause 1 of said General Rule 20 in said Revision contained as its last sentence the words "But the arguments must be filed within the first ten days of the Term, and signed by attorneys or counsellors of this Court," in place of the words, "but twenty-five copies of the arguments, signed by attorneys or counsellors of this Court, must be first filed," as contained in the present Clause.

By an amendment, promulgated March 10th, 1865, 2 Wall. viii., Clause 1 of General Rule 20, as it then existed in the Revision of December Term, 1858, was amended so as to permit counsel on both sides to submit their printed arguments within the first thirty days of the Term, but required twenty copies of the arguments signed by attorneys or counsellors of the Supreme Court, to be first filed, ten of the copies for the Court, two for the Reporter, three to be retained by the Clerk, and the residue for counsel.

By an amendment made to General Rule 20, at December Term, 1865, 3 Wall. viii., the time to submit was extended from the first thirty days of the Term to the first sixty days of the Term. In the Revision of May 1st, 1871, Clause 1 of General Rule 20 was the same as Clause 1 of the same General Rule in the Revision of December Term, 1858, 21 How. xii., as amended at December Term, 1865, 3 Wall. viii.

By an amendment to General Rule 20, promulgated May 3d, 1875, 21 Wall. v., the time to submit printed arguments was extended so as to include the first ninety days of the Term. No further change was made in the Clause until this Revision. For this Clause in the Revision of 1884, see 108 U. S. 584.

NOTE.—See Circular Letter of Clerk of the Supreme Court, under Clause 1, Rule 10.

AUTHORITIES.

1. Where a pamphlet was sent to the Justices, touching the question in controversy in a cause, the Supreme Court stated that they desired it to be

understood, that the practice of the Court was not to receive or examine such papers, unless they were presented in Court, and shown to the opposite counsel. The pamphlet, however, was sent without knowledge of either counsel, and they did not countenance the same, and it was sent by the agent of the appellant, who was not aware of the irregularity of the proceeding.

Mitchell v. United States, 8 Pet. 307. (January Term, 1834.)

2. A case wherein counsel stipulated in writing, on or before July 5th, 1876, to submit the cause on printed arguments under Rule 20, during the first ninety days of the following October Term. The stipulation was filed July 5th, but on October 21st appellant's counsel notified counsel for appellees that he withdrew his agreement. Counsel for appellees filed a printed argument within the ninety days, and asked that the cause be taken up and considered as submitted under the Rule. The Supreme Court, after stating that they had never before been called upon to settle the practice applicable to this class of cases, ordered the appellants to cause a printed argument to be filed on their behalf on or before a certain day thereafter, or show cause why the stipulation for submission should not be enforced, and in default, that the cause be taken up and considered as submitted under the Rule, without argument by the appellants, *holding* that stipulations between counsel, relative to the course of proceeding in a cause pending in the Supreme Court, could not be withdrawn by one party without the consent of the other, except by leave of the Court upon cause shown.

Muller v. Dows, 94 U. S. 277. (October Term, 1876.)

3. Where a case was submitted under the 20th Rule, and a provision of paragraph 4, sub-division 3, of the then General Rule 21 (See History of Clause 2, Rule 21), which provided that when a Statute of a State was cited, so much thereof as might be deemed necessary to the decision of the case should be printed at length, either in or with the brief, was entirely disregarded by both parties to the cause, the submission was set aside, and the cause restored to its place on the docket; the Supreme Court insisting on a strict observance by counsel of all Rules intended to facilitate their examination of causes, especially of those submitted.

School District v. Insurance Co., 101 U. S. 472. (October Term, 1879.)

[See same case under Sub-division 3, Clause 2, and under Clause 3, Rule 21.]

4. A motion to set aside a submission. The motion was granted, the submission set aside, and the case restored to its place on the docket. The grounds upon which the Supreme Court set aside the submission were substantially that the submission was objected to by parties who, being collaterally interested in the decision that might be made, had united in the employment of counsel to present their defence, and had

contributed to a common fund for the payment of the expenses of the litigation.

Smelting Company v. Kemp, 103 U. S. 666. (October Term, 1880.)

5. By the terms of a stipulation between counsel to submit a case under Rule 20, the stipulation being dated November 15th, 1883, and filed in the Supreme Court, December 12th, 1883, counsel for the plaintiff in error was to have until December 12th to serve and file his printed argument, and counsel for the defendant in error until the 25th of December to serve and file his printed argument, and counsel for the plaintiff in error, ten days to reply. The defendant in error filed an argument on the 15th of December. The plaintiff in error filed no argument. On the last day for submitting cases under the Rule, which was after the expiration of the time the plaintiff in error was entitled to for his reply, the defendant in error submitted the case under the stipulation. After affirming the doctrine laid down in *Muller v. Dows*, 94 U. S. 277 (Authority No. 2 under this Clause of Rule 20), the Supreme Court took the case as submitted under the 20th Rule, although there was no argument for the plaintiff in error.

Aurrecochea v. Bangs, 110 U. S. 217. (October Term, 1883.)

2. When a case is reached in the regular call of the docket, and a printed argument shall be filed for one or both parties, the case shall stand on the same footing as if there were an appearance by counsel.

HISTORY.

This Clause had its origin in Original General Rule 44, promulgated at January Term, 1837, 11 Pet. vii., 1 How. xxxvi., which was in these words:

“When a printed argument shall be filed for one or both parties, the case shall stand on the same footing as if there were an appearance by counsel.”

In the Revisions of December Term, 1858, 21 How. xii., and of May 1st, 1871, this Clause appeared *totidem verbis* as Clause 2 of General Rule 20. For this Clause in the Revision of 1884, see 108 U. S. 584.

3. When a case is taken up for trial upon the regular call of the docket, and argued orally in behalf of only one of the parties, no printed argument for the opposite party will be received, unless it is filed before the oral argument begins, and the court will proceed to consider and decide the case upon the *ex-parte* argument.

HISTORY.

With the exception of the words "for the opposite party," this Clause is in precisely the same language as Original General Rule 58, promulgated at December Term, 1850, 10 How. v., and as Clause 3 of General Rule 20 of the Revisions of December Term, 1858, 21 How. xii., and of May 1st, 1871.

For this Clause in the Revision of 1884, see 108 U. S. 584.

4. No brief or argument will be received, either through the clerk or otherwise, after a case has been argued or submitted, except upon leave granted in open court after notice to opposing counsel.

HISTORY.

This Clause is in precisely the same language as an amendment to General Rule 20, as contained in the Revision of May 1st, 1871, and which amendment was promulgated December 14th, 1874, 20 Wall. xvi.

For this Clause in the Revision of 1884, see 108 U. S. 584.

Rule 21.

BRIEFS.

1. The counsel for the plaintiff in error or appellant shall file with the clerk of the court, at least six days before the case is called for argument, twenty-five copies of a printed brief, one of which shall, on application, be furnished to each of the counsel engaged upon the opposite side.

HISTORY

This Clause appears to have had its origin in part in Original General Rule 8, adopted February 4th, 1795, 3 Dallas, 120. In 1 Cranch, xvii., 1 Wheat. xiv., 1 Pet. vi., the Rule is given in these words:

"The Court give notice to the gentlemen of the bar, that hereafter they will expect to be furnished with a statement of the material points of the case, from the counsel on each side of the cause."

This Clause also had its origin in part in Original General Rule 30, promulgated at February Term, 1821, 6 Wheat. v. This Original General Rule 30 is given as Rule 27 in 1 Pet. ix., and as Rule 29 in 1 How. xxx. It was in these words:

“After the present Term, no cause standing for argument will be heard by the Court, until the parties shall have furnished the Court with a printed brief or abstract of the cause, containing the substance of all the material pleadings, facts, and documents, on which the parties rely, and the points of law and fact intended to be presented at the argument.”

It is worthy of note that after the promulgation of Original General Rule 37 at January Term, 1831, 5 Pet. vii., 724, which Rule related to the printing of the record, and the distribution and taxation of the costs of printing, some members of the Bar seemed to be of the opinion that this Original General Rule 37 superseded the necessity of a compliance with Original General Rule 29 of February Term, 1821, above quoted, 1 How. xxx., and accordingly asked the Court for instructions as to whether it would be necessary for counsel to furnish the Court with printed briefs or abstracts; in reply to which, MR. CHIEF JUSTICE MARSHALL informed the Bar, that the Court still considered a compliance with the requisites of Rule 29 necessary; and that the Court expected to be furnished, by counsel, with the printed briefs or abstracts under said Rule. This statement of the Court appears as Original General Rule 39, 6 Pet. iv.

At the January Term, 1849, Original General Rule 53 was promulgated, 7 How. v., the second Clause of which was in these words:

“Counsel will not be heard, unless a printed abstract of the case be first filed, together with the points intended to be made, and the authorities intended to be cited in support of them arranged under the respective points. And no other book or case can be referred to in the argument.”

This Original General Rule 53 is also printed in 8 How. v., with the statement that MR. JUSTICE WAYNE dissented from the Rule, and that WOODBURY J., did not concur in the Rule.

On April 24th, 1850, Original General Rule 58 was promulgated, 8 How. vi., providing that *twelve* printed copies of the abstract, points, and authorities required by the 53d Original General Rule be filed with the clerk, three days before the case is called for argument, nine of these copies for the Court, one for the Reporter, one for the opposing counsel, and the remaining one to be retained by the Clerk.

The Clause of Original General Rule 53, above quoted, and the substance of Original General Rule 58, above referred to, appeared in the Revision of December Term, 1858, 21 How. xii. and xiii., as Clauses 3 and 6 respectively of General Rule 21, with some changes, mostly immaterial; the principal change being that *fifteen* printed copies of the brief were thereby required to be filed instead of *twelve* as theretofore required. By an amendment promulgated February 9th, 1865, 2 Wall. viii., Clause 6, of General Rule 21, as contained in the Revision of December Term, 1858, was amended so as to require *twenty* printed copies of the brief instead of *fifteen*. In the Revision of May 1st, 1871, General Rule 21 was entirely remodeled, and the portion of the Revision relating to General

Rule 21 is contained in 11 Wall. ix. Clause 3 of General Rule 21, as amended read as follows:

“Counsel will not be heard unless a printed brief or abstract of the case be first filed, together with the points made, and the authorities cited in support of them, arranged under the respective points.”

And Clause 11 read as follows:

“Twenty printed copies of the abstract, points, and authorities required by this rule shall be filed with the clerk by the plaintiff in error or appellant six days, and by the defendant in error or appellee three days, before the case is called for argument.”

On November 16th, 1872, the 21st General Rule was further amended, 14 Wall. xi., and was again entirely remodeled, Clause 3 of General Rule 21, as it had theretofore existed, and as above quoted, being omitted, and for Clause 11 thereof, as above quoted, there was substituted as Clause 3, a Clause which was in precisely the same language as the present Clause 1, of the present General Rule 21, with the exception of the word “*twenty*” in place of the words “*twenty-five*.” For this Clause in the Revision of 1884, see 108 U. S. 584.

NOTE.—The signature of a firm name to a brief in the Supreme Court never has been and is not now sufficient. The brief must be signed by a member of the bar of the Supreme Court. See History under Clause 1, Rule 20. See also the Circular Letter of the Clerk of the Supreme Court under Clause 1, Rule 10.

AUTHORITIES.

1. The counsel in a cause not having furnished the Supreme Court with a statement of the points of the case, according to the Rule of the Court, and being called on for such a statement, observed that there was but a single point in the case, and therefore they had not supposed it necessary to reduce it to writing, whereupon the Supreme Court said they would proceed to hear the cause without having been furnished with a statement of the points; but they wished it to be understood that they always expected such a statement. If there be only one point, it is the easier to state it.

Faw v. Marsteller, 2 Cranch, 10. (February Term, 1804.)

[See same case under Clause 3, Rule 21.]

2. Counsel being asked by the Supreme Court for a statement of the case agreeably to the Rule, alleged that it was not in his power to make a statement, as it was a question as to the weight of testimony, on contradictory evidence; but the Court said they required a statement, even though the question is a question of fact; at least the substance of the bill and answer, and the facts which were in contest might be stated.

Reily v. Lamar, 2 Cranch, 344 (350). (February Term, 1805.)

[See same case under subdivision 1, Clause 2, and under Clause 3, Rule 21.]

3. A case wherein MR. CHIEF JUSTICE MARSHALL said: "We wish to give general notice to the gentlemen of the bar, that unless statements of the case are furnished according to the Rule, the causes must either be dismissed or continued."

Peyton v. Brooke, 3 Cranch, 92. (February Term, 1805.)

[See same case under Clause 3, Rule 21.]

4. A case dismissed because the counsel for the appellant had not furnished the Supreme Court with a statement of the points of the case, agreeably to the general Rule on that subject.

Schooner "Catherine" v. The United States, 7 Cranch, 97. (February Term, 1812.)

5. On a case being called it was submitted by the appellants on the record, no brief being filed on their behalf. The appeal was dismissed. The Supreme Court called attention to the amendment to the 21st Rule, promulgated at the last term [See History under this Clause]; stated that the Rules were intended to facilitate the presentation of causes by counsel and their consideration by the Court; that the Rule required what the brief should contain, and in what order; that the necessity of strict compliance with the Rules, in view of the greatly augmented business of the Court, was evident, and that such compliance would facilitate as much the labor of the bar as those of the bench.

Portland Company v. United States, 15 Wall. 1. (December Term, 1872.)

[See same case under Clauses 3 and 4, Rule 21.]

6. Judgment affirmed because the plaintiff in error had filed no assignments of error or brief as required by the Rules.

Ryan v. Koch, 17 Wall. 19. (December Term, 1872.)

[See same case under Clause 4, Rule 21.]

2. This brief shall contain, in the order here stated—

(1.) A concise abstract, or statement of the case, presenting succinctly the questions involved and the manner in which they are raised.

(2.) A specification of the errors relied upon, which, in cases brought up by writ of error, shall set out separately and particularly each error asserted and intended to be urged; and in cases brought up by appeal the specification shall state, as particularly as may be, in what the decree is alleged to be erroneous. When the error alleged is to the admission or to the rejection of evidence, the specification shall quote the full substance of the evidence admitted or rejected. When

the error alleged is to the charge of the court, the specification shall set out the part referred to *totidem verbis*, whether it be instructions given or instructions refused. When the error alleged is to a ruling upon the report of a master, the specification shall state the exception to the report and the action of the court upon it.

(3.) A brief of the argument, exhibiting a clear statement of the points of law or fact to be discussed, with a reference to the pages of the record and the authorities relied upon in support of each point. When a statute of a State is cited, so much thereof as may be deemed necessary to the decision of the case shall be printed at length.

HISTORY.

Prior to the amendment to the 21st General Rule, promulgated November 16th, 1872, 14 Wall. xii., the provisions of the General Rules of the Supreme Court stating what the printed brief or abstract of the case should contain were simple, and are for the most part quoted at length or referred to in the History of Clause 1 of this Rule. In addition to the Original and Revised General Rules on the subject quoted and cited under Clause 1 of this General Rule, the Revision of May 1st, 1871, so far as it related to General Rule 21, 11 Wall. ix., contains the following Clauses.

"4. The brief filed on behalf of a plaintiff in error or an appellant shall also contain a statement of the errors relied upon, and in case of an appeal an abstract of the pleadings and proofs, exhibiting clearly and succinctly the issues presented.

"5. Each error shall be separately alleged and particularly specified; otherwise it will be disregarded.

"6. When the error alleged is to the charge of the court, the part of the charge referred to shall be quoted *totidem verbis* in the specification.

"7. When the error alleged is to the admission or rejection of evidence, the specification shall quote the full substance of the evidence offered, or copy the offer as stated in the bill of exceptions. Any alleged error not in accordance with these rules, will be disregarded."

In the amendment of November 16th, 1872, 14 Wall. xi. Section 4 of General Rule 21 as amended, contained three subdivisions, of which subdivision I was the same as subdivision (1) of the present Clause 2 of General Rule 21. Subdivision II was the same as the first sentence of subdivision (2) of the present Clause 2 of General Rule 21, with the exception that it made use of the words "*an assignment*," in the place of the first two words "*a specification*," and "*specifically*," in the place of "*particularly*," and "*assignment*" in the place of "*specification*" as used

in the present subdivision (2) of Clause 2 of General Rule 21, and it also contained as its last sentence, the last sentence of the present subdivision (2) of Clause 2 of General Rule 21, with some immaterial verbal alterations; but it did not contain the 2d and 3d sentences of the present subdivision (2) of Clause 2 of General Rule 21. Subdivision III of said Section 4 of said General Rule 21 as amended in 1872, was, however, the same as subdivision (3) of the present Clause 2 of General Rule 21, and Sections 5 and 6 of said General Rule 21 as amended in 1872, now appear *totidem verbis* the same as the 3d and 2d sentences respectively of subdivision (2) of Clause 2 of General Rule 21.

For this Clause in the Revision of 1884, see 108 U. S. 585.

AUTHORITIES.

UNDER SUBDIVISION (1).

ABSTRACT OR STATEMENT OF CASE.

1. The Supreme Court requires a statement of the case, even though the question is a question of fact; and at least the substance of the bill and answer, and the facts which are in contest, might be stated.

Reily v. Lamar, 2 Cranch, 344 (350) note. (February Term, 1805.)

[See same case under Clauses 1 and 3, and Rule 21.]

2. A case wherein the following order was made: "Whereas, upon an inspection of the printed argument of Thomas Washington, Esq., of counsel for the plaintiffs in error in this cause, it appears to the Court that some of the passages thereof, and more particularly those on pages 112, 113, 114, 115, 117, 118, 119, 122, 123, 124, 125, 126, 130, 131, 132, 134, 145, 146, and 150, are reflecting on a member of the Court, and thereby disrespectful to the whole Court: It is thereupon now here ordered by this Court, that the said passages or parts of said argument, and all others which may be deemed disrespectful to any member of the Court, be, and the same are hereby, stricken out; and that this order be entered on the Minutes of this Court." •

Lessee of Charles O. Scott v. Thomas Reid, Jr., 13 Pet. x. (January Term, 1839.)

UNDER SUBDIVISION (2).

FIRST SENTENCE—CONTENTS OF SPECIFICATION OF ERRORS GENERALLY.

3. The Supreme Court reverts to the fact that none of the printed arguments with replies and counter-replies contain any regular assignment of errors as required by the Rule.

Gregg v. Moss, 14 Wall. 564 (568). (December Term, 1871.)

[See same case under Clauses 3 and 4, Rule 21.]

4. The Supreme Court declares that many assignments of error have been made in total disregard of this Rule, which is declared to be necessary to the

disposition of the business which presses upon the Court, and declares its intention of hereafter enforcing strict compliance with its demand. The Court states that if errors are not assigned in the manner required, the assignments will be treated as if not made at all, and accordingly the Court passes over without notice the greater number of those assignments which are alleged to appear on the record, but consider some assignments though not made in full conformity with the Rule. The report of the case sets out fully the statement of the case and the assignment of the error appearing on the brief for the plaintiff in error.

Dietsch v. Wiggins, 15 Wall. 539 (546). (December Term, 1872.)

[See same case under Clauses 3 and 4, Rule 21.]

5. Judgment affirmed because there was no such assignment of error as is required by this Rule, and the Supreme Court did not see in the record any error that ought to be noticed without such assignment.

Treat v. Jemison, 20 Wall. 652. (October Term, 1874.)

[See same case under Clauses 3 and 4, Rule 21.]

6. Such questions only as are specified in the assignment of errors are in general to be regarded as open to the plaintiff, and it is very doubtful whether an assignment that the decision of the Circuit Court is for the wrong party is sufficient to present any question for decision.

Scholey v. Rew, 23 Wall. 331 (345). (October Term, 1874.)

[See same case under Clauses 3 and 4, Rule 21.]

7. The object of the Rule requiring an assignment of errors is to enable the Supreme Court and opposing counsel to see on what points the plaintiff's counsel intend to ask a reversal of the judgment, and to limit the discussion to those points. This practice of unlimited assignments is a perversion of the Rule, defeating all its purposes, bewildering the counsel of the other side, and leaving the Court to gather from a brief, often as prolix as the assignments of error, which of the latter are really relied on.

Phillips, etc. Construction Co. v. Seymour, 91 U. S. 646 (648). (October Term, 1875.)

[See same case under Clauses 3 and 4, Rule 21.]

UNDER SUBDIVISION (2).

SECOND SENTENCE—RESPECTING THE ADMISSION OR REJECTION OF EVIDENCE.

8. When the error assigned is to the admission or rejection of evidence the specification must quote the full substance of the evidence offered, or a copy of the offer as stated in the bill of exceptions, so as to enable the Supreme Court to see whether the evidence offered was material. In this case one of the assignments of error was the rejection of a depo-

sition which was not before the Supreme Court, nor any statement of what it tended to prove.

Packet Company v. Clough, 20 Wall. 528 (542). (October Term, 1874.)
[See same case under Rule 4 and Clause 3, Rule 21.]

UNDER SUBDIVISION (2).

THIRD SENTENCE—RESPECTING THE CHARGE OF THE COURT.

9. An assignment alleging error in the charge of the court below, which avers simply that that court erred in giving the instructions which were given to the jury, on its own motion, (that is, in the general charge,) in lieu of the instructions asked for by the parties, is made in disregard of this Rule, because it does not specify in what the error consists, or in what part of the charge it is contained.

Lucas v. Brooks, 18 Wall. 436 (456). (October Term, 1873.)
[See same case under Clauses 3 and 4, Rule 21.]

SUBDIVISION (3).

SECOND SENTENCE—STATUTE OF A STATE.

10. Where a cause was submitted under the 20th Rule on printed briefs, and both parties entirely disregarded the provision that "when the statute of a State is cited, so much thereof as may be deemed necessary to the decision of the case shall be printed at length," the submission was set aside and the case restored to its place on the docket.

School Dist. v. Insurance Co., 101 U. S. 472. (October Term, 1879.)
[See same case under Clause 1, Rule 20, and Clause 3, Rule 21.]

3. The counsel for a defendant in error or an appellee shall file with the clerk twenty-five printed copies of his argument, at least three days before the case is called for hearing. His brief shall be of a like character with that required of the plaintiff in error or appellant, except that no specification of errors shall be required, and no statement of the case, unless that presented by the plaintiff in error or appellant is controverted.

HISTORY.

This Clause appears to have had its origin in part in Original General Rule 8, adopted February 4th, 1795, 3 Dallas, 120; 1 Cranch, xvii.; 1 Wheat. xiv.; 1 Pet. vi., which, as given in 1 Cranch, xvii., was in these words, viz.:

"The court gave notice to the gentlemen of the bar, that hereafter

they will expect to be furnished with a statement of the material points of the case, from the counsel on each side of the cause."

This Clause also appears to have had its origin in part in Original General Rule 30, promulgated at February Term, 1821, 6 Wheat. v. This Original General Rule is given as Rule 27, in 1 Peters ix., and as Rule 29, in 1 How. xxx. It was in these words:

"After the present term no cause standing for argument will be heard by the Court until the parties shall have furnished the Court with a printed brief or abstract of the cause, containing the substance of all the material pleadings, facts, and documents on which the parties rely, and the points of law and fact intended to be presented at the argument."

At the January Term, 1849, Original General Rule 53 was promulgated, 7 How. v., the second Clause of which was in these words:

"Counsel will not be heard, unless a printed abstract of the case be first filed, together with the points intended to be made, and the authorities intended to be cited in support of them arranged under the respective points. And no other book or case can be referred to in the argument."

This Original General Rule 53 is also printed in 8 How. v., with the statement that MR. JUSTICE WAYNE dissented from the Rule, and that WOODBURY, J., did not concur in the Rule.

On April 24th, 1850, Original General Rule 58 was promulgated, 8 How. vi., providing that *twelve* printed copies of the abstract, points and authorities required by the 53d Original General Rule, be filed with the Clerk three days before the case is called for argument, nine of these copies for the Court, one for the Reporter, one for the opposing counsel, and the remaining one to be retained by the Clerk.

The Clause of Original General Rule 53, above quoted, and the substance of Original General Rule 58, above referred to, appeared in the Revision of December Term, 1858, 21 How. xii. and xiii., as Clauses 3 and 6 respectively, of General Rule 21, with some changes, mostly immaterial, the principal change being that *fifteen* printed copies of the brief were thereby required to be filed, instead of *twelve* as theretofore required.

By an amendment promulgated February 9th, 1865, 2 Wall. viii., Clause 6 of said Revised General Rule 21 was amended so as to require *twenty* printed copies of the brief instead of *fifteen*.

In the Revision of May 1st, 1871, General Rule 21 was entirely remodeled, and the portion of the Revision relating to General Rule 21 is contained in 11 Wall. ix. Clause 3 of General Rule 21 as so revised read as follows:

"Counsel will not be heard unless a printed brief or abstract of the case be first filed, together with the points made, and the authorities cited in support of them, arranged under the respective points."

And Clause 11 of General Rule 21 as so revised was as follows:

“*Twenty* printed copies of the abstract, points, and authorities, required by this rule shall be filed with the clerk, by the plaintiff in error or appellant six days, and by the defendant in error or appellee three days, before the case is called for argument.

On November 16th, 1872, the 21st General Rule was further amended, 14 Wall. xi., and was again entirely remodeled, Clause 3 of the General Rule as it had theretofore existed and as above quoted, being omitted, and the General Rule as remodeled containing a Clause 7, which was, with the exception of some immaterial changes, and the use of the word “assignment” instead of “specification,” and “*twenty*” for “*twenty-five*” the same as the present Clause 3 of General Rule 21. For this Clause in the Revision of 1884, see 108 U. S. 585.

NOTE.—The signature of a firm name to a brief in the Supreme Court never has been and is not now sufficient. The brief must be signed by a member of the bar of the Supreme Court. See History under Clause 1, Rule 20. See also the Circular Letter of the Clerk of the Supreme Court, under Clause 1, Rule 10.

AUTHORITIES.

THAT BRIEF MUST BE FILED.

For the substance of the decisions not stated hereunder in full, see same where indicated under the cases respectively.

1. *Faw v. Marsteller*, 2 Cranch, 10. (February Term, 1804.)

See same case under Clause 1, Rule 21.

2. *Reily v. Lamar*, 2 Cranch, 344 (350), note. (February Term, 1805.)

[See same case under Clause 1, and under Subdivision 1, Clause 2, Rule 21.]

3. On the Supreme Court calling for statements of the case agreeably to the Rule of the Court, counsel for the defendant in error said he had supposed the Rule to extend only to plaintiffs in error, but the Court said they expected them from both sides. No statements were prepared, and MARSHALL, Ch. J., said “We wish to give general notice to the gentlemen of the bar, that unless statements of the case are furnished according to the Rule, the causes must either be dismissed or continued.”

Peyton v. Brooke, 3 Cranch, 92. (February Term, 1805.)

[See same case under Clause 1, Rule 21.]

4. *Portland Company v. United States*, 15 Wall. 1. (December Term, 1872.)

[See same case under Clauses 1 and 4, Rule 21.]

RESPECTING CONTENTS OF BRIEF OF DEFENDANT IN ERROR OR APPELLEE.

For the substance of the authorities cited in full hereunder, see the same cases where indicated below respectively.

UNDER CLAUSE 2, SUBDIVISION (1), RULE 21.

5. *Reily v. Lamar*, 2 Cranch, 344 (350), note. (February Term, 1805.)
[See same case also under Clause 1, Rule 21.]

UNDER CLAUSE 2, SUBDIVISION (2), RULE 21—FIRST SENTENCE—SPECIFICATIONS GENERALLY.

6. *Gregg v. Moss*, 14 Wall. 564 (568). (December Term, 1871.)
[See same case also under Clause 4, Rule 21.]
7. *Dietsch v. Wiggins*, 15 Wall. 539. (December Term, 1872.)
[See same case also under Clause 4, Rule 21.]
8. *Treat v. Jemison*, 20 Wall. 652. (October Term, 1874.)
[See same case also under Clause 4, Rule 21.]
9. *Scholey v. Rev.*, 23 Wall. 331 (345). (October Term, 1874.)
[See same case also under Clause 4, Rule 21.]
10. *Phillips, etc., Construction Co. v. Seymour*, 91 U. S. 646. (October Term, 1875.)
[See same case also under Clause 4, Rule 21.]

UNDER CLAUSE 2, SUBDIVISION (2), RULE 21—SECOND SENTENCE—RESPECTING THE ADMISSION OR REJECTION OF EVIDENCE.

11. *Packet Company v. Clough*, 20 Wall. 528. (October Term, 1874.)

UNDER CLAUSE 2, SUBDIVISION (2), RULE 21—THIRD SENTENCE—RESPECTING THE CHARGE OF THE COURT.

12. *Lucas v. Brooks*, 18 Wall. 436. (October Term, 1873.)
[See same case also under Clause 4, Rule 21.]

UNDER CLAUSE 2, SUBDIVISION (3), RULE 21—SECOND SENTENCE—STATUTE OF A STATE.

13. *School Dist. v. Insurance Co.*, 101 U. S. 472. (October Term, 1879.)
[See same case also under Clause 1, Rule 20.]

4. When there is no assignment of errors, as required by section 997 of the Revised Statutes, counsel will not be heard, except at the request of the court; and errors not specified according to this rule will be disregarded; but the court, at its option, may notice a plain error not assigned or specified.

HISTORY.

It is worthy of note that Clause 4 of General Rule 21 refers especially to an assignment of errors as required by the foregoing Section 997 of the Revised Statutes. This is the first time that a Rule of the Supreme Court has referred to an assignment of errors such as is required by the Revised Statutes. In the amendment to the 21st General Rule, promulgated November 16th, 1872, 14 Wall. xii., Section 8 was in these words:

“Without such an assignment of errors, counsel will not be heard except at the request of the court, and errors not assigned according to this rule will be disregarded, though the court at its option, may notice a plain error not assigned.”

This Section 8 of the amended General Rule 21, of November 16th, 1872, taken in connection with Subdivision II. of Section 4 of said General Rule 21 as then amended, 14 Wall. xi., which required that the brief should contain “an assignment of the errors relied upon,” etc., had reference to assignments of errors contained in the brief, and did not refer specifically to assignments of errors annexed to and returned with the writ of error as provided by the Statute.

This Section 8 of the amended General Rule 21 of November 16th, 1872, was the successor of the following provisions of General Rule No. 21, promulgated May 1st, 1871 [Revision of May 1st, 1871], 11 Wall. ix., relating to the contents of Briefs, viz:

“5. Each error shall be separately alleged and particularly specified; otherwise it will be disregarded.

“7. * * * Any alleged error not in accordance with these rules will be disregarded.

“8. Counsel will be confined to a discussion of the errors stated, but the court may, at its discretion, notice any other errors appearing in the record.”

These provisions of General Rule 21 as revised and promulgated May 1st, 1871, were then new, but for prior Rules bearing upon the subject reference may be had to Original General Rule 8, adopted February 4th, 1795, 3 Dallas, 120, 1 Cranch, xvii., 1 Wheat. xiv., 1 Pet. vi., and Original General Rule 30, promulgated at February Term, 1821, 6 Wheat. v., and appearing as Rule 27 in 1 Pet. ix., and as Rule 29 in 1 How. xxx. See History under Clause 1, General Rule 21. For this Clause in the Revision of 1884 see 108 U. S. 585.

FEDERAL STATUTES.

Section 997 of the Revised Statutes of the United States (Second Edition), page 186, referred to in the text of this Clause, is in these words:

“There shall be annexed to and returned with any writ of error for the removal of a cause, at the day and place therein mentioned,

an authenticated transcript of the record, an assignment of errors, and a prayer for reversal, with a citation to the adverse party.”

See also Act of Congress of 24th September, 1789, ch. 20, sec. 22, 1 Stat. at Large, 84.

Act of Congress of 5th February, 1867, ch. 28, sec. 2, 14 Stat. at Large, 386.

AUTHORITIES.

1. The Supreme Court will notice a material and incurable defect in the pleadings and verdict, as they are represented in the record to have existed in the court below, although such defect is not noticed in the bill of exceptions nor suggested by counsel in argument in the Supreme Court. *Garland v. Davis*, 4 How. 131. (January Term, 1846.)

2. Want of jurisdiction and irregularity of the writ are the only grounds for dismissal of a writ of error on *motion*. It is not necessary for a party to specify on the record the errors he complains of, and they are not even informally brought to the notice of the Supreme Court till the argument is heard. The Supreme Court will not dismiss on *motion* merely because no error appears on face of record.

Hecker v. Fowler, 1 Black, 95. (December Term, 1861.)

3. Prior to the adoption of this Clause in its present form, in a case which was submitted on printed arguments on each side, with replies and counter-replies, none of which contained any regular assignment of errors, as required by the Rule, and where the record presented a bill of exceptions of thirty printed pages of testimony, which was certified to be all that was given on the trial, and the arguments addressed themselves to the entire merits on this evidence, the Supreme Court stated that they felt very much inclined to dismiss the writ of error or affirm the judgment without an attempt to look up the questions of law which might possibly be involved in the record, stating, further, that the number of cases coming to the Supreme Court in which the bill of exceptions embodied all the evidence offered, and counsel, tempted by this, argued before the Court the whole case as if the verdict concluded nothing, required a decisive remedy. The Court, however, did examine into the record in this case.

Gregg v. Moss, 14 Wall. 564 (568). (December Term, 1871.)

[See same case under Subdivision (2), Clause 2, and under Clause 3, Rule 21.]

4. *Portland Co. v. United States*, 15 Wall. 1. (December Term, 1872.)

[For substance of this decision, see same case under Clause 1, Rule 21. See case cited also under Clause 3, Rule 21.]

5. The Supreme Court think it proper to consider some assignments of

error though not made in full conformity with the Rule, and most of the errors assigned having been made in total disregard of the Rule; but state that the Rule is necessary to the disposition of the business which presses upon them, and that it is their intention thereafter to enforce strict compliance with its demands; and that if errors are not assigned in the manner required, the assignment will be treated as if not made at all; and therefore the Supreme Court feel justified in passing without notice the greater number of those that were alleged to appear in the record.

Deutsch v. Wiggins, 15 Wall. 539 (546). (December Term, 1872.)

[See same case under Subdivision (2), Clause 2, and under Clause 3, Rule 21.]

6. *Ryan v. Koch*, 17 Wall. 19. (December Term, 1872.)

[For substance of decision, see same case under Clause 1, Rule 21.]

7. *Lucas v. Brooks*, 18 Wall. 436. (October Term, 1873.)

[For substance of decision, see same case under Subdivision (2), Clause 2, Rule 21; also under Clause 3, Rule 21.]

8. Judgment affirmed because there was no such assignment of errors in the case as was required by the Rule, and the Supreme Court did not see in the record any error that ought to be noticed without an assignment.

Treat v. Jemison, 20 Wall. 652. (October Term, 1874.)

[See same case under Subdivision (2), Clause 2, Rule 21; also under Clause 3, Rule 21.]

9. A case where there was no appearance in the Supreme Court by the plaintiffs in error, and no errors had been there assigned. The Court accordingly, on the case being called, were about to dismiss the writ, but, on application of the defendants in error, looked into the record, and, finding no errors, affirmed the judgment.

Maxwell v. Stewart, 21 Wall. 71. October Term, 1874.)

10. In a case where the Supreme Court found that the plaintiffs in error had no cause of complaint, the Circuit Court having rendered a judgment against them, which was, if anything, too favorable, declared that as the present writ presented only assignments of error made by the defendants, and as they were unsustained, the Court could do no more than affirm the judgment; but that had the case been brought to the Supreme Court by the plaintiffs below, they would have directed a judgment for the proper amount due.

Tilden v. Blair, 21 Wall. 241 (249). (October Term, 1874.)

11. *Scholey v. Rew*, 23 Wall. 331 (345). (October Term, 1874.)

[For substance of decision, see same case under Subdivision (2), Clause 2, Rule 21; also under Clause 3, Rule 21.]

12. *Phillips &c. Construction Co. v. Seymour*, 91 U. S. 646. (October Term, 1875.)

[For substance of decision, see same case under Subdivision (2), Clause 2, Rule 21; also under Clause 3, Rule 21.]

13. A failure to annex to or return with a writ of error an assignment of errors as required by Sec. 997 of the Revised Statutes, is no ground for dismissal for want of jurisdiction. If an assignment is filed in accordance with the requirements of par. 4, Rule 21, it will ordinarily be enough.

School District of Ackley v. Hall, 106 U. S. 428. (October Term, 1882.)

[See same case under Clause 5, Rule 6.]

5. When, according to this rule, a plaintiff in error or an appellant is in default, the case may be dismissed on motion; and when a defendant in error or an appellee is in default, he will not be heard, except on consent of his adversary, and by request of the court.

HISTORY.

This Clause originated in a Clause of Original General Rule 53, promulgated at December Term, 1849, 7 How. v., and 8 How. v., from which Rule MR. JUSTICE WAYNE dissented, and in which WOODBURY, J., did not concur. The Clause which is applicable was in these words:

If one of the parties omits to file such a statement" [i. e., a printed abstract of the case, points, and authorities], "he cannot be heard, and the case will be heard *ex parte*, upon the argument of the party by whom the statement is filed."

The Clause just quoted appeared *totidem verbis* as Clause 5 of General Rule 21 of the Revision of December Term, 1858, 21 How. xii., and as Clause 10 of General Rule 21 of the Revision of May 1st, 1871, 11 Wall. x. Section 9 of General Rule 21 as amended November 16th, 1872, 14 Wall. xii., was in precisely the same language as Clause 5 of the present General Rule 21. For this Clause in the Revision of 1884, see 108 U. S. 585

6. When no counsel appears for one of the parties, and no printed brief or argument is filed, only one counsel will be heard for the adverse party; but if a printed brief or argument is filed, the adverse party will be entitled to be heard by two counsel.

HISTORY.

This Clause is *totidem verbis* Clause 7 of General Rule 21 of the Revision

of December Term, 1858, 21 How. xiii., Clause 12 of General Rule 21 of the Revision of May 1st, 1871, 11 Wall. x., and Clause 10 of said General Rule as amended November 16th, 1872, 14 Wall. xii. For this Clause in the Revision of 1884, see 108 U.S. 585.

Rule 22.

ORAL ARGUMENTS.

1. The plaintiff or appellant in this court shall be entitled to open and conclude the argument of the case. But when there are cross-appeals they shall be argued together as one case, and the plaintiff in the court below shall be entitled to open and conclude the argument.

HISTORY.

The provisions of this Clause first appeared as General Rule 22 of the General Rules adopted at the Revision of December Term, 1858, 21 How. xiii. Such General Rule 22 was, with the exception of a slight immaterial alteration, the same as Clause 1 of the present General Rule 22, and so also was General Rule 22 of the Revision of May 1st, 1871. For this Clause in the Revision of 1884, see 108 U. S. 586.

2. Only two counsel will be heard for each party on the argument of a case.

HISTORY.

The first Rule limiting the number of counsel for each party was adopted at February Term, 1812, Original General Rule 23, 1 Wheat. xviii., 1 Pet. ix., and 1 How. xxviii. It was in these words :

“Ordered, that only two counsel be permitted to argue for each party, plaintiff and defendant in a cause.”

This Original General Rule appeared in substantially the same form as Clause 1 of General Rule 21 of the Revisions of December Term, 1858, 21 How. xii., and May 1st, 1871, 11 Wall. ix., and of the amendment to General Rule 21 promulgated November 16th, 1872, 14 Wall. xi. For this Clause in the Revision of 1884, see 108 U. S. 586.

AUTHORITIES.

1. In answer to a question whether the General Rule which directed

that only two counsellors should be heard on each side of any cause in the Supreme Court, was intended to prevent the division of a cause into distinct points, and the hearing of two counsellors on each point, WASHINGTON, JUSTICE, informed the bar that the Court considered the Rule as inflexible, whatever might be the number of points or parties in a cause.

Anonymous, 7 Cranch, 1. (February Term, 1812.)

2. In a case involving a constitutional question of great public importance, and the sovereign rights of the United States and the State of Maryland; and the government of the United States having directed their Attorney-General to appear for the plaintiff in error, the Supreme Court dispensed with its General Rule permitting only two counsel to argue for each party.

Mc Culloch v. State of Maryland, 4 Wheat. 316 (322), note. (February Term, 1819.

3. In cases where the United States is a party and is represented by the Attorney-General, or the Assistant Attorney-General, or special counsel employed by the Attorney-General, no counsel can be heard in opposition on behalf of any other Department of the Government; but under special circumstances as detailed in this case the Rule will be departed from.

"The Gray Jacket," 5 Wall. 370. (December Term, 1866.)

3. Two hours on each side will be allowed for the argument, and no more, without special leave of the court, granted before the argument begins. The time thus allowed may be apportioned between the counsel on the same side, at their discretion: Provided, always, That a fair opening of the case shall be made by the party having the opening and closing arguments.

HISTORY.

No limitation as to time was imposed upon counsel by the Supreme Court, prior to the first day of December Term, 1849, when Original General Rule 53 took effect, having been promulgated at January Term, 1849, 7 How. v., 8 How. v. MR. JUSTICE WAYNE dissented from, and WOODBURY, J., did not concur in the Rule. The first clause of the Rule was in these words:

"Ordered that no counsel will be permitted to speak, in the argument of any case in this court, more than two hours, without the special leave of the court, granted before the argument begins."

That Clause appeared without change as Clause 2 of General Rule 21, in the Revision of December Term, 1858, 21 How. xii. In the Revision

of May 1st, 1871, Clause 2 of General Rule 21, 11 Wall. ix., and Section 2 of the amendment of the 21st General Rule, promulgated November 16th, 1872, were, with a few immaterial alterations, the same as Clause 3 of the present General Rule 22.

For this Rule in the Revision of 1884, see 108 U. S. 586.

AUTHORITIES.

1. Two hours were allowed counsel on behalf of the Treasury Department for the argument, without prejudice to the time which remained to the counsel who opened the cause for reply to the Attorney-General and the counsel for the captors, as the circumstances of the case were peculiar. See the same case under Clause 2 of General Rule 22.

"*The Gray Jacket*," 5 Wall. 370. (December Term, 1866.)

Rule 23.

INTEREST.

1. In cases where a writ of error is prosecuted to this court, and the judgment of the inferior court is affirmed, the interest shall be calculated and levied, from the date of the judgment below until the same is paid, at the same rate that similar judgments bear interest in the courts of the State where such judgment is rendered.

HISTORY.

This Clause originated in Original General Rules 17 and 18, promulgated at February Term, 1803, 1 Cranch, xviii., 1 Wheat. xvi., 1 How. xxvi., which were in these words:

"Rule 17. In all cases where a writ of error shall delay the proceedings on the judgment of the Circuit Court, and shall appear to have been sued out merely for delay, damages shall be awarded, at the rate of *ten per centum per annum* on the amount of the judgment."

"Rule 18. In such cases, where there exists a real controversy, the damages shall be only at the rate of *six per centum per annum*. In both cases, the interest is to be computed as part of the damages."

At February Term, 1807, Original General Rule 20 was promulgated, 1 How. xxvii. It was as follows:

"*It is ordered*, that where damages are given by the rule passed at February term, 1803, the said damages shall be calculated to the day of the affirmance of the judgment in this Court."

NOTE.—Original General Rule 20, as given in 1 How. xxvii., differs from the Rule of the same number in 1 Wheat. and 1 Pet., which relates to other matters.

t December Term, 1851, Original General Rule 62 was promulgated, to take effect on the 1st day of December term, 1852. 13 How. v. (See *Mitchell v. Harmony*, 13 How, 115. Authority No. 2 under this Clause), the first paragraph of which was substantially the same as Clause 1 of the present General Rule 23 ; and Clause 1 of the present General Rule 23 is also substantially the same as Clause 1 of General Rule 23 of the Revisions of 1858, 21 How. xiii., and of May 1st, 1871. For this Clause in the Revision of 1884, see 108 U. S. 586.

FEDERAL STATUTES.

‘Sec. 966. Interest shall be allowed on all judgments in civil causes, recovered in a circuit or district court, and may be levied by the marshal under process of execution issued thereon, in all cases where, by the law of the State in which such court is held, interest may be levied under process of execution on judgments recovered in the courts of such State; and it shall be calculated from the date of the judgment, at such rate as is allowed by law on judgments recovered in the courts of such State.’

Revised Statutes (Second Edition), § 966, p. 182; Act of Congress of 23d August, 1842, ch. 118, sec. 8, 5 Stat. at Large, 518.

AUTHORITIES.

1. In error to the Circuit Court for the District of Rhode Island, the Supreme Court having affirmed the judgment, stated with respect to the entry of affirmance that interest was to be calculated to the present time upon the aggregate sum of principal and interest in the judgment below, but no further; and also that they could not extend the calculation until the June Term, when the mandate would operate in the Circuit Court, as the party had a right to pay the money immediately.

Brown v. Von Braam, 3 Dallas. 344 (356). (February Term, 1797.)

2. In a case where the Supreme Court affirmed a judgment brought up by a writ of error from the Circuit Court of the United States for the Southern District of New York, the Rule as to mode of calculating interest prior to the 1st day of the December Term, 1852, was stated to be at the rate of six per cent. per annum from the day when judgment was signed in the Circuit Court to the day of affirmance by the Supreme Court. This case, was decided under the 18th and 20th Original Rules referred to in the History of this Clause, which were still in force. As a result of this decision Original General Rule 62, 13 How v., referred to in the History of this Clause, was promulgated, in effect amending the previous Original General Rule 20 so as to make it conform to the Act of Congress of 23d August 1842, Ch. 118, Sec. 8, 5 Stat. at Large, 518, cited above, and to take effect on the 1st day of December Term, 1852.

Mitchell v. Harmony, 13 How. 115 (149). (December Term, 1851.)

3. The substance of this case is more fully set forth as Authority No. 2, under Clause 3, Rule 23. The original decision of the Supreme Court in it awarding interest was made in the early part of the same term at which *Mitchell v. Harmony*, 13 How. 115 (Authority No. 2, under this Clause of Rule 23), was decided, and before the decision in that case, and was consequently held to fall within the operation of the same Rules which governed the decision in *Mitchell v. Harmony*, respecting the calculation of damages upon the affirmance of the decree.

Perkins v. Fourniquet, 14 How. 328 (332). (December Term, 1852.)

[See same case under Clause 3, Rule 23.]

4. Cases against a collector of customs, where judgments against the collector were affirmed by the Supreme Court on writs of error, and the judgment of the Supreme Court, as set forth in the mandate, directed that the judgments of the Circuit Court be affirmed "with interest until paid, at the same rate per annum that similar judgments bear in the Courts of the State of New York." At a subsequent term of the Supreme Court, the United States moved, on behalf of the collector, to correct the judgment and mandate by striking out the directions as to interest, so that the original judgments of the Circuit Court of October 14, 1881, should not carry interest up to the time a new judgment was rendered by the court below on the mandate of the Supreme Court. The suits were brought to recover damages for excessive fees exacted at the custom-house on entries. The Supreme Court denied the application, stating that the interest allowed was allowed under Rule 23, and § 966 of the Revised Statutes, that such interest for the time the writ of error is pending is really damages for delay, that when the mandate of the Supreme Court goes to the court below, it is necessary that that court, with a view to execution, should enter a further judgment in accordance with the mandate, covering the direction of the Supreme Court as to interest and as to costs in the Supreme Court on the writ of error, and that the "final judgment" in the cases, there having been certificates of probable cause under section 989 of the Revised Statutes, are the judgments as they stand after their affirmance by the Supreme Court, and after the court below has rendered such judgment as the mandate of the Supreme Court requires. Therefore the interest allowed in these cases was held to be interest before final judgment, and to be of the same character as the interest allowed before judgment in a suit against a collector where there is no writ of error.

Schell v. Cochran, *Cochran v. Schell*, 107 U. S. 625. (October Term, 1882.)

[See same case under Clause 2, Rule 23.]

5. Where several cases were dismissed on application of the Government, and the judgments and mandates of the Supreme Court contained no direction as to interest on the judgments below, during the time the writs

of error were pending, and the defendants in error subsequently applied to the Supreme Court to correct the judgments and mandates so as to award to them interest as such or as damages for delay, the Supreme Court denied the applications, stating that there was no doubt that if the defendants in error in the cases had in season asked for judgment of affirmance, their applications would have been allowed in accordance with the decision in *Schell v. Cochran*, 107 U. S. 625 [Authority No. 4 under this Clause of Rule 23], but that the application was made at a subsequent term, and after the mandates had been sent down, and no especial right to vary the judgments or mandates having been reserved, the Supreme Court held that they had no power to grant the application.

Schell v. Dodge, Barney v. Isler, Barney v. Cox, Barney v. Friedman, 107 U. S. 629. (October Term, 1882.)

[See same case under Clause 2, Rule 23, and Clause 5, Rule 24.]

2. In all cases where a writ of error shall delay the proceedings on the judgment of the inferior court, and shall appear to have been sued out merely for delay, damages at a rate not exceeding ten per cent., in addition to interest, shall be awarded upon the amount of the judgment.

HISTORY.

At the February Term, 1803, Original General Rules 17 and 18 were adopted, 1 Cranch, xviii., 1 Wheat. xvi., 1 Pet. vii., and 1 How. xxvi. They were in these words:

“Rule 17. In all cases where a writ of error shall delay the proceedings on the judgment of the Circuit Court, and shall appear to have been sued out merely for delay, damages shall be awarded, at the rate of *ten per centum per annum*, on the amount of the judgment.”

“Rule 18. In such cases, where there exists a real controversy, the damages shall be only at the rate of *six per centum per annum*. In both cases the interest is to be computed as part of the damages.”

The foregoing Original General Rule 17 was incorporated in Clause 3 of General Rule 23 in the Revision of December Term, 1858, 21 How. xiii., which was in these words:

“In all cases where a writ of error shall delay the proceedings on the judgment of the Circuit Court, and shall appear to have been sued out merely for delay, damages shall be awarded, at the rate of *ten per centum per annum* on the amount of the judgment; and the said damages shall be calculated from the date of the judgment in the court below until the money is paid.”

In the Revision of May 1st, 1871, Clause 2 of General Rule 23 was amended so as to read as follows, 11 Wall. x.:

“In all cases where a writ of error shall delay the proceedings on the judgment of the inferior court, and shall appear to have been sued out merely for delay, damages at the rate of 10 per cent. in addition to interest, shall be awarded upon the amount of the judgment.”

For this Clause in the Revision of 1884, see 108 U. S. 586.

FEDERAL STATUTES.

“Sec. 1010. Where, upon a writ of error, judgment is affirmed in the Supreme Court or a circuit court, the court shall adjudge to the respondent in error just damages for his delay, and single or double costs, at its discretion.”

Revised Statutes (Second Edition), § 1010, p. 189; Act of Congress of 24th September, 1789, ch. 20, sec. 23, 1 Stat. at Large, 85; Act of Congress of 2d March, 1803, ch. 40, sec. 2, 2 Stat. at Large, 244; Act of Congress of 5th February, 1867, ch. 28, sec. 2, 14 Stat. at Large, 386.

AUTHORITIES.

1. In this case, which came up on a writ of error to the Circuit Court for the District of Georgia, the CHIEF JUSTICE delivered the opinion of the Supreme Court that where a judgment, or decree, was affirmed, on a writ of error, there could be no allowance of damages, but for the delay.

Cotton v. Wallace, 3 Dall. 302 (304.) (August Term, 1796.)

2. A case where ten per cent. damages were refused, the Supreme Court not considering it a case of delay.

McNiel v. Holbrook, 12 Pet. 84 (90). (January Term, 1838.)

3. Judgment affirmed with ten per cent. interest as damages for delay, in a case where the only exceptions taken in the court below were to the refusals of the court to continue the case to the next term, and where the continuance below and the taking out of the writ of error were only for the purpose of delaying the payment of a just debt, and where no counsel appeared for the plaintiff in error.

Barrow v. Hill, 13 How. 54. (December Term, 1851.)

4. Ten per cent. damages given, the writ of error being obviously sued out for delay, as no question was raised upon the trial of the cause in the court below, nor did the plaintiffs in error, by counsel or otherwise, make one in the Supreme Court.

Kilbourne v. State Savings Institution of St. Louis, 22 How. 503. (December Term, 1859.)

5. Where parties sued on a promissory note, having no defence, entered a false plea, which was overruled on demurrer, refused to plead in bar,

and had judgment against them for want of a plea, ten per cent. damages were given on affirmance.

Sutton v. Bancroft, 23 How. 320. (December Term, 1859.)

6. On application of counsel for defendant in error, no counsel appearing for the plaintiffs, the Supreme Court awarded ten per cent. damages for delay in a case where the plaintiffs in error did not except to the ruling of the District Court, did not assign error in the Supreme Court, and where it was obvious from an inspection of the transcript that there was no error in the proceedings. Motions to amend mere formal defects in the pleadings are always addressed to the discretion of the court, and are usually granted as a matter of course, and their allowance is never the subject of error. No other questions could have arisen on the writ of error.

Jenkins v. Banning, 23 How. 455. (December Term, 1859.)

7. Judgment affirmed with ten per cent. damages for delay.

Prentice v. Pickersgill, 6 Wall. 511. (December Term, 1867.)

8. A case where, there having been no exception to the rulings or instructions of the court, the Supreme Court observed that the case seemed to have been brought simply for delay, and the judgment was affirmed with ten per cent. damages.

Chicago City Railway Co. v. Bour, 6 Wall. 513, note. (December Term, 1867.)

9. Ten per cent. damages refused on the ground that the Supreme Court could not say under the circumstances that the writ of error was not prosecuted in good faith, and in the expectation of obtaining a reversal of the order, the Court saying that if, upon the application for removal of the cause from the State court the decisions of the Supreme Court recently made had been announced, there might be ground for argument that the writ of error was sued out merely for delay. But it must be remembered that at the time of the suing out of the writ of error all of the decisions were seriously controverted.

McKee v. Rains, 10 Wall. 22 (26). (December Term, 1869.)

10. A case where the Supreme Court held the defence to be without merit, and gave ten per cent. damages for delay.

Campbell v. Wilcox, 10 Wall. 421. (December Term, 1870.)

11. Judgment affirmed with ten per cent. damages for delay in addition to interest.

Insurance Company v. Huchbergers, 12 Wall. 164. (December Term, 1870.)

12. As there was nothing in the record which tended to show error in the judgment, or to repel the conclusion that the writ was prosecuted for

delay, and as there was no bill of exceptions, judgment was affirmed with ten per cent. damages.

Hennessy v. Sheldon, 12 Wall. 440. (December Term, 1870.)

13. Judgment affirmed with ten per cent. damages for delay, where the Supreme Court stated that there could have been no good ground for a writ of error under former adjudications of the Court, and that there was no attempt made to question the adjudications.

Pennywit v. Eaton, 15 Wall. 382 (384). (December Term, 1872.)

14. Judgment affirmed with costs, interest and ten per cent. damages for delay, in a case where the plaintiff in error, who was required by the laws of the State where a certain deed was made to put on the revenue stamps, alleged that the revenue stamp affixed thereto was too small, thus delaying the judgment two years and a half.

Hall v. Jordan, 19 Wall. 271. (October Term, 1873.)

15. The Supreme Court can adjudge damages under Section 1010 of the Rev. Stats., and Rule 23, in all cases where it appears that a writ of error has been sued out merely for delay. This gives the Court the only power they have to prevent frivolous appeals and writs of error, and they deem it not improper to say that this power will be exercised without hesitation where they find that their jurisdiction has been invoked merely to gain time.

Amory v. Amory, 91 U. S. 356. (October Term, 1875.)

16. In a case where there was clearly no error in the record, where the answer did not state the facts sufficiently to constitute a defence to the action, where no counsel appeared to prosecute the suit, and no brief was filed and no errors assigned, the Supreme Court was satisfied that the case was brought for delay, and accordingly affirmed the judgment with costs, and five hundred dollars damages for the delay, in addition to interest at the rate allowed by law and the Rules of the Court, stating that while, with the Rule in force, they could not award for damages for delay, more than ten per cent. upon the amount of the judgment, they might, in the exercise of their judgment, give less. In this decision the Rules and Statutes referred to in the History of this Clause, and also the cases of *Mitchell v. Harmony*, 13 How. 115 (149), (Authority No. 2 under Clause 1, Rule 23), and *Perkins v. Fourniquet*, 14 How. 328 (Authority No. 2 under Clause 3 of Rule 23), were fully considered.

The Supreme Court here found some circumstances in the defence making it proper to give less than ten per cent. damages in excess of interest as compensation for delay.

West Wisconsin Railway Co. v. Foley, 94 U. S. 100. (October Term, 1876.)

17. In a case where there was a motion to affirm only, and where it was

not pretended that there appeared on the record some color of right to a dismissal, the Supreme Court denied the motion to affirm, and stated that their experience taught them that the only way to discourage frivolous appeals and writs of error was by the use of their power to award damages, and that they thought this a proper case in which to say that hereafter more attention would be given to that subject, and the Rule enforced both according to its letter and spirit; that parties should not be subjected to the delay of proceedings for review in the Supreme Court without reasonable cause, and that their power to make compensation for the loss occasioned by an unwarranted delay ought not to be overlooked.

Whitney v. Cook, 99 U. S. 607. (October Term, 1878.)

[See same case under Clause 5, Rule 8.]

18. *Schell v. Cochran*, *Cochran v. Schell*, 107 U. S. 625. (October Term, 1882.)

[For the substance of the decision in these cases, see the same cases under Clause 1, Rule 23.]

19. Where several cases were dismissed on application of the Government, and the judgments and mandates of the Supreme Court contained no direction as to interest on the judgments below during the time the writs of error were pending, and the defendants in error subsequently applied to the Supreme Court to correct the judgments and mandates so as to award to them interest as such, or as damages for delay, the Supreme Court denied the applications, stating that there was no doubt that if the defendants in error in the cases had in season asked for judgments of affirmance, their applications would have been granted, and interest would have been allowed in accordance with the decision in *Schell v. Cochran*, 107 U. S. 625 [Authority No. 4 under Clause 1, Rule 23], but that as the application was made at a subsequent term, and after the mandates had been sent down, and no special right to vary the judgments or mandates having been reserved, the Court had no power to grant the application.

Schell v. Dodge, *Barney v. Isler*, *Barney v. Cox*, *Barney v. Friedman*, 107 U. S. 629. (October Term, 1882.)

[See same case under Clause 1, Rule 23, and Clause 5, Rule 24.]

3. The same rule shall be applied to decrees for the payment of money in cases in equity, unless otherwise ordered by this court.

HISTORY.

This Clause appears for the first time as the second Clause of Original General Rule 62, promulgated at December Term, 1851, 13 How. v.; the only difference being that the word "chancery" was used in the second Clause of said Original General Rule 62, in place of the word

"equity" used above. Prior to the adoption of said Original General Rule 62, the Rules relating to damages for delay and the rate of interest in case of a real controversy were found in Original General Rules 17 and 18, promulgated at February Term, 1803, 1 Cranch, xviii; 1 Wheat. xvi; 1 Pet. vii., and 1 How. xxvi., and in Original General Rule 20 adopted at February Term, 1807, as given in 1 How. xxvii. For the substance of these Rules, and for the particulars with reference thereto, and for Clause 1 of Original General Rule 62, see the History of the two preceding Clauses of this Rule, especially Clause 1.

The second Clause of Original General Rule 62 above cited, appears *totidem verbis* as Clause 2 of General Rule 23 of the Revision of December Term, 1858, 21 How. xiii., and as Clause 3 of General Rule 23 of the Revision of May 1st, 1871. For this Clause in the Revision of 1884, see 108 U. S. 586.

FEDERAL STATUTES.

§ 966 Revised Statutes (Second Edition), 182, quoted under Clause 1, Rule 23.

§ 1010 Revised Statutes (Second Edition), 189, quoted under Clause 2, Rule 23.

AUTHORITIES.

1. In this case, which was an appeal from the Circuit Court for the district of West Tennessee, the Supreme Court states that by the judiciary Act of 1789, Chapter 20, Section 23, they are authorized in cases of affirmance of any judgment or decree, to award to the respondent just damages for his delay, and that by the Rules of the Supreme Court, made in the February Term, 1803, and the February Term, 1807, in cases where the suit is for the mere delay, damages are to be awarded at the rate of ten per centum per annum, on the amount of the judgment, to the time of the affirmance thereof. And in cases where there is a real controversy, the damages are to be at the rate of six per cent. per annum only. And in both cases the interest is to be computed as part of the damages. It is, therefore, solely for the decision of the Supreme Court, whether any damages, or interest (as a part thereof), are to be allowed or not in cases of affirmance. If upon the affirmance no allowance of interest or damages is made, it is equivalent to a denial of any interest or damages; and the Circuit Court, in carrying into effect the decree of affirmance, cannot enlarge the amount thereby decreed; but is limited to the mere execution of the decree in the terms in which it is expressed. This appeal was from a decree rendered upon a mandate directing the court below to execute a former decree of the Supreme Court. The decree appealed from decreed a sum equivalent to interest upon the original sum decreed in the Circuit Court from the time of the rendition of the judgment to the af-

firmance by the Supreme Court at the January Term, 1830. In the decree of affirmance by the Supreme Court nothing was said as to any allowance for damages, or interest. The decree of the Circuit Court, upon the mandate of the Supreme Court, was therefore reversed on the ground that interest or damages could not be given by the Circuit Court in the execution of the mandate, where the same had not been decreed by the Supreme Court upon the original appeal.

Boyce's Executors v. Grundy, 9 Pet. 275 (289). (January Term, 1835.)

2. On appeal from the Circuit Court of the United States for the Southern District of Mississippi, it appeared that the Circuit Court passed the decree in favor of the appellees against the appellant, directing him to pay a certain sum within thirty days thereafter, with legal interest from the date of the decree; that the Supreme Court affirmed this decree at a prior term, with costs and damages at the rate of six per cent. per annum, and a mandate was issued to the Circuit Court, reciting the judgment of the Supreme Court, and directing it to be carried into execution. After the mandate was filed, the appellees obtained an execution by which the marshal was commanded to levy the amount of the original judgment in the Circuit Court, with the Mississippi interest of eight per cent. and damages at the rate of six per cent. in addition, making together fourteen per cent. from the date of the original judgment until paid. *Held*, that upon the affirmance of the original decree of the Circuit Court, the appellees were entitled to damages at the rate of six per cent., to be calculated from the date of the decree below to the date of the affirmance, and to no further interest or damages, and also *held* that under the 23d Section of the Judiciary Act of 1789, no distinction is made between cases in equity and at law, and that in either of them the damages to be allowed, in addition to the amount found to be due by the judgment or decree of the court below, is confided to the judicial discretion of the Supreme Court, that the 17th, 18th and 20th Original General Rules were adopted in pursuance of this power, and that the Act of Congress of 23d August, 1842, ch. 187, sec. 8, 5 Stat. at Large 513 (518) (See FEDERAL STATUTES under Clause 1, Rule 23), did not apply to judgments or decrees in the Supreme Court. The Statutes and Rules on this subject are fully discussed in this case.

Perkins v. Fourniquet, 14 How. 328 (331 and 332). (December Term, 1852.)

[See same case under Clause 1, Rule 23.]

3. *West Wisconsin Railway Co. v. Foley*, 94 U. S. 100.

[For substance of this case, see same under Clause 2, Rule 23.]

4. Where upon an appeal from the Circuit Court of the United States for the Northern District of Illinois in a patent suit, the Supreme Court affirmed the decree "with costs and interest until paid, at the same rate per annum that similar decrees bear in the Courts of the State of Illinois,"

and where the Circuit Court, when the mandate went down, ordered that the decree affirmed be executed by the collection of the money found to be due, and interest, which under the established rule in the State, was six per cent., the Supreme Court on a subsequent appeal *held* that the order of the Circuit Court was right, and that by the word "similar" the Supreme Court meant decrees for the payment of money, and not decrees in patent suits, as the State Courts had no jurisdiction thereof.

Railroad Co. v. Turrill, 101 U. S. 836. (October Term, 1879.)

NOTE.—See Authorities under the other Clauses of Rule 23.

4. In cases in admiralty, interest shall not be allowed, unless specially directed by the court.

HISTORY.

This Clause is entirely new. 108 U. S. 586.

AUTHORITIES.

PRIOR TO THE ADOPTION OF THIS CLAUSE.

1. An admiralty case where damages for delay were asked for, but the Supreme Court refused them, stating that the decree must be affirmed without an increase of damages, and the interest to the present day must run on the debt only, and not on the damages.

Jennings v. "The Brig Perseverance," 3 Dallas, 336 (338). (February Term, 1797.)

2. An admiralty cause where the Supreme Court in reversing a former sentence of the Circuit Court decreed that the "*Sarah*" and her cargo ought to be restored to the original owners, subject to those charges of *freight, insurance* and other expenses which would have been incurred by the owners in bringing the cargo into the United States; which equitable deductions the defendants were at liberty to show in the Circuit Court. The Supreme Court was of opinion, that the sentence of the Circuit Court of South Carolina ought to be reversed, and the cause was remanded to that court in order that a final decree might be made therein conformably to their opinion. After a reference, auditors reported that the claimant was entitled to certain sums, which sums being deducted from the decree, the claimant must pay the appellant two years' interest on the residue, at the rate of seven per cent. per annum, and the Supreme Court having to determine whether its former decree had been executed according to its true intent and meaning, *held*, as to the

question of interest, that they were of opinion that the appellants ought not to be charged with interest, that on their former decree they did not award interest, nor would interest have been decreed in this case had the particular fact of the sale been brought before them. The allowance of interest was overruled.

Himely v. Rose, 5 Cranch, 313. (February Term, 1809.)

3. Interest not decreed to captors in a prize case where the stipulation for the appraised value of the goods bore no reference to interest, the Supreme Court also stating that it was true that interest might be decreed against Mr. Burke personally, not as the stipulator, but as the claimant in the cause; but then it would be by way of damages for the detention or delay, that in this view it was a matter open for discussion upon the original appeal; and no interest having been then asked for or granted, the claim is finally at rest. Interest allowed libellant at the rate of six per cent. per annum from the time of the allowance of the present appeal until the final execution of the decree.

"The Santa Maria," 10 Wheat. 431. (February Term, 1825.)

4. The Supreme Court states that cases in admiralty are not embraced within the then 62d Rule, 13 How. v. (see History under Clause 1, Rule 23), and that it applied to cases of law and equity only. Therefore where a decree was affirmed in the Supreme Court by an equal division of the Justices of the Court, and the decree of affirmance did not give interest on the amount decreed by the court below, and the appellee now moved the Supreme Court to amend the decree and mandate so as to give interest on the amount awarded by the Circuit Court, the motion was overruled.

Hemmenway v. Fisher, 20 How. 255. (December Term, 1857.)

5. Penalties are imposed where writs of error are sued out merely for delay in cases of judgments at law for damages, and the Supreme Court declares that if the Rule were applicable to the case before it—a prize case—where the conduct of counsel in advising an appeal was disapproved—it would apply the Rule.

"The Douro," 3 Wall. 564. (December Term, 1865.)

6. An admiralty case where the Supreme Court states that as appeals of the kind therein taken are usually taken for delay, it may become necessary to amend the Second Article of the 23d Rule so that ten per cent. damages shall be allowed in addition to the interest provided for in the first article of that Rule.

"The Eutaw," 12 Wall. 136 (142). (December Term, 1870.)

NOTE.—See the Authorities under the other Clauses of Rule 23.

Rule 24.**COSTS.**

1. In all cases where any suit shall be dismissed in this court, except where the dismissal shall be for want of jurisdiction, costs shall be allowed to the defendant in error or appellee, unless otherwise agreed by the parties.

HISTORY.

With the exception of some immaterial verbal alterations, this Clause is the same as Original General Rule 45, promulgated at January Term, 1838, 12 Pet. vii., given also as the first Clause of an Original General Rule numbered 45 in 1 How. xxxvi., and as Clause 1 of General Rule 24 in the Revision of December Term, 1858, 21 How. xiii., and of May 1st, 1871. For this Clause in the Revision of 1884, see 108 U. S. 587.

FEDERAL STATUTES.**RELATING TO THE AMOUNT OF FEES OR COSTS OF ATTORNEYS AND THE MANNER OF THEIR TAXATION.**

“Sec. 823. The following and no other compensation shall be taxed and allowed to attorneys, solicitors, and proctors in the courts of the United States, to district attorneys, clerks of the circuit and district courts, marshals, commissioners, witnesses, jurors, and printers in the several States and Territories, except in cases otherwise expressly provided by law. But nothing herein shall be construed to prohibit attorneys, solicitors, and proctors from charging to and receiving from their clients, other than the Government, such reasonable compensation for their services, in addition to the taxable costs, as may be in accordance with general usage in their respective States, or may be agreed upon between the parties.”

Revised Statutes (Second Edition), § 823, p. 154; Act of Congress of 26th February, 1853, ch. 80, sec. 1, 10 Stat. at Large, 161; Act of Congress of 3d March, 1855, ch. 155, sec. 12, 10 Stat. at Large, pp. 670, 671; Act of Congress of 22d February, 1875, ch. 95, 18 Stat. at Large, 333.

Sec. 824. Revised Statutes (Second Edition), p. 154, relates to the amount of fees of attorneys, solicitors and proctors.

“Sec. 983. The bill of fees of the clerk, marshal and attorney, and the amount paid printers and witnesses, and lawful fees for exemplifications and copies of papers necessarily obtained for use on trials in cases where by law costs are recoverable in favor of the pre-

vailing party, shall be taxed by a judge or clerk of the court, and be included in and form a portion of a judgment or decree against the losing party. Such taxed bills shall be filed with the papers in the cause."

Revised Statutes (Second Edition), § 983, p. 184; Act of Congress of 26th February, 1853, ch. 80, sec. 3, 10 Stat. at Large, 168.

"Sec. 984. Before any bill of costs shall be taxed by any judge or other officer, or allowed by any officer of the Treasury, in favor of clerks, marshals, commissioners, or district attorneys, the party claiming such bill shall prove by his own oath, or that of some other person having a knowledge of the facts, to be attached to such bill, and filed therewith, that the services charged therein have been actually and necessarily performed, as therein stated."

Revised Statutes (Second Edition), § 984, p. 184; Act of Congress of 26th February, 1853, ch. 80, sec. 3, 10 Stat. at Large, 169; Act of Congress of 23d June, 1874, ch. 469, sec. 7, 18 Stat. at Large, 256.

AUTHORITIES.

PREVIOUS TO THE ADOPTION OF ORIGINAL GENERAL RULE 45 IN 1838.

1. MR. CHIEF JUSTICE MARSHALL stated the practice of the Supreme Court to be that where there was no appearance for the plaintiff in error, the defendant might either have the plaintiff called, and dismiss the writ of error, or might open the record and pray for an affirmance, and the CHIEF JUSTICE also stated, in answer to a question from the clerk, that in such cases costs go of course.

Montalet v. Murray, 3 Cranch, 249. (February Term, 1806.)

2. A case where the writ of error having been dismissed by the Supreme Court for want of jurisdiction of the Circuit Court, counsel for the defendants in error prayed that the dismissal might be *with* costs, the original defendants being also defendants in error. The clerk stated that the practice had theretofore been to dismiss *without* costs, when the dismissal was for want of jurisdiction; but the Supreme Court directed the writ of error to be dismissed *with* costs.

Winchester v. Jackson, 3 Cranch, 515. (February Term, 1806.)

3. A case where judgment was reversed for want of jurisdiction of the Circuit Court and with costs under the authority of *Winchester v. Jackson*, 3 Cranch, 515 (Authority No. 2 under this Clause of Rule 24), but the Supreme Court subsequently gave this general direction, among others, to the clerk, viz.: that when a judgment is reversed, for want of jurisdiction (viz.: of the Circuit Court), it must be without costs.

Montalet v. Murray, 4 Cranch, 47. (February Term, 1807.)

[See same case under Clauses 2 and 3, Rule 24.]

4. A case in which MR. CHIEF JUSTICE MARSHALL stated that the Supreme Court did not give costs where a cause was dismissed for want of jurisdiction; and accordingly the writ of error was dismissed without costs. In a note to this case, reference is made to *Winchester v. Jackson*, 3 Cranch, 515 (Authority No. 2 under this Clause of Rule 24), as holding that costs will be allowed upon a dismissal of a writ of error, for want of jurisdiction, if the original defendant be also defendant in error.

Inglee v. Coolidge, 2 Wheat. 363 (368). (February Term, 1817.)

5. A case wherein MR. CHIEF JUSTICE MARSHALL said that in all cases where the cause is dismissed for want of jurisdiction, no costs are allowed, and the motion for costs was denied.

M'Iver v. Wattles, 9 Wheat. 650. (February Term, 1824.)

SUBSEQUENT TO THE ADOPTION OF ORIGINAL GENERAL RULE 45 IN 1838.

6. A case where costs were allowed to the defendant in error, the cause being dismissed for want of service of a citation.

Brown v. Union Bank of Florida, 4 How. 465. (January Term, 1846.)

7. The Supreme Court cannot give judgment for costs where the case is dismissed for want of jurisdiction.

Strader v. Graham, 18 How. 602. (December Term, 1855.)

8. A case which was remanded to the court below with leave to plaintiffs to amend their bill generally, and with directions that if they should fail to do this it should be dismissed without prejudice. One of the co-defendants was decreed costs in the Supreme Court.

Gaylords v. Kelsharo, 1 Wall. 81 (83). (December Term, 1863.)

9. A case in which the Supreme Court said that costs were improperly allowed in the court below, as the case was dismissed for want of jurisdiction on the face of the pleadings, and in such cases the general rule is that costs will not be allowed in the Supreme Court. Sometimes an exception to that rule is admitted, as where the defendant in the court below is the defendant in the Supreme Court. The decree was reversed as the Circuit Court had no jurisdiction, and consequently the Supreme Court had none, and the cause was remanded with directions to dismiss the bill of complaint but without costs.

Hornthall v. The Collector, 9 Wall. 560 (567). (December Term, 1869.)

10. In a case where an appeal was taken to the Supreme Court from a decree entered in the Circuit Court, in exact accordance with the mandate of the Supreme Court upon a previous appeal, the appeal was dismissed with costs.

Stewart v. Salamon, 97 U. S. 361. (October Term, 1878.)

[See same case under Clause 5, Rule 24.]

11. This was a case which was dismissed by the court below for want of jurisdiction. The Supreme Court reversed the judgment of the court below, and gave costs against the plaintiffs in error, who had wrongfully caused the removal of the cause from the State Court. In the course of their opinion the Supreme Court discuss at length the question of costs and use the following language:

“By sec. 5 of the act of March 3d, 1875, the Circuit Court is directed, in remanding a cause, to ‘make such order as to costs as shall be just;’ and the bond given by the removing party under sec. 3 is a bond to pay ‘all costs that may be awarded by the said Circuit Court, if said court shall hold that such suit was wrongfully or improperly removed thereto.’ These provisions were manifestly designed to avoid the application of the general rule, which, in cases where the suit failed for want of jurisdiction, denied the authority of the court to award judgment against the losing party, even for costs. As to costs in this Court, the question is not covered by any statutory provision, and must be settled on other grounds. Ordinarily, by the long established practice and universally recognized rule of the common law, in actions at law, the prevailing party is entitled to recover a judgment for costs, the exception being that where there is no jurisdiction in the Court to determine the litigation, the cause must be dismissed for that reason, and, as the Court can render no judgment for or against either party, it cannot render a judgment even for costs. Nevertheless there is a judgment or final order in the cause dismissing it for want of jurisdiction. Accordingly, in *Winchester v. Jackson*, 3 Cranch, 514 (Authority No. 2 under this Clause of Rule 24), costs were allowed where a writ of error was dismissed for want of jurisdiction, the parties not appearing upon the record to be citizens of different States, the plaintiff in error being plaintiff below. But in respect to that case, it is to be observed, that the want of jurisdiction disclosed by the record was that of the Circuit Court, and that there was jurisdiction in this Court to consider and determine the question of the jurisdiction of the Circuit Court, and to reverse its judgment, had it been the other way, for want of jurisdiction. And the judgment for costs in that case is justified on that ground, and seems to have been rendered against the plaintiff in error, because he was the losing party in the sense of having ineffectually invoked the jurisdiction of the Circuit Court. And this is just what has taken place in the present suit. Here the plaintiffs in error wrongfully removed the cause to the Circuit Court. They seek by a writ of error to this Court to reverse upon the merits the judgment rendered against them, and bring here the whole record. That discloses the want of jurisdiction in the Circuit Court to render any judgment, and this Court, in the exercise of its jurisdiction, reverses the judgment for that reason alone, its jurisdiction extending no further. It could not dismiss the writ of error for want of jurisdiction in the Circuit Court, for that would be to give effect to such want of jurisdiction; and this Court has jurisdiction of the writ of error to reverse the

judgment on that ground." The case of *Montalet v. Murray*, 4 Cranch, 46 (Authority No. 3 under this Clause of Rule 24), is also considered and discussed.

Mansfield, Coldwater & L. M. R. Co. v. Swan, 111 U. S. 379 (386), (April 21st, 1884).

2. In all cases of affirmance of any judgment or decree in this court, costs shall be allowed to the defendant in error or appellee, unless otherwise ordered by the court.

HISTORY.

With the exception of some immaterial verbal alterations, this Clause is the same as Original General Rule 46, promulgated at January Term, 1838, 12 Pet. vii., given also as the second Clause of Original General Rule numbered 45, in 1 How. xxxvi., and as Clause 2 of General Rule 24 in the Revisions of December Term, 1858, 21 How. xiv., and of May 1st, 1871. For this Clause in the Revision of 1884, see 108 U. S. 587.

FEDERAL STATUTES.

See the Federal Statutes quoted under Clause 1, Rule 24.

AUTHORITIES.

PRIOR TO THE ADOPTION OF ORIGINAL GENERAL RULE 46 IN 1838.

1. In a case where the Supreme Court in general terms reversed a judgment of the High Court of Appeals of Maryland, and affirmed the judgment of the General Court, the question arose what costs should be allowed, and the Supreme Court decided that the judgment of the Superior Court of Maryland being reversed, it became a mere nullity, and costs must follow the right as decided in the Supreme Court. It accordingly ordered the judgment of the General Court to be affirmed, and the costs in the Courts of Maryland and in the Supreme Court to be allowed to the plaintiff in error.

Clerke v. Harwood, 3 Dallas, 342. (February Term, 1797.)

[See same case under Clause 5, Rule 24.]

2. A case where the Supreme Court gave this general direction, among others, to the Clerk, viz.: that in all cases of affirmance costs go of course.

Montalet v. Murray, 4 Cranch, 47. (February Term, 1807.)

[See same case under Clauses 1 and 3, Rule 24.]

3. A case where a decree was affirmed with costs.

Campbell v. Gordon, 6 Cranch, 176 (183). (February Term, 1810.)

4. A case where judgment was affirmed with costs.

Walton v. United States, 9 Wheat. 651 (658). (February Term, 1824.)

3. In cases of reversal of any judgment or decree in this court, costs shall be allowed to the plaintiff in error or appellant, unless otherwise ordered by the court. The cost of the transcript of the record from the court below shall be a part of such costs, and be taxable in that court as costs in the case.

HISTORY.

The first sentence of this Clause has its origin in Original General Rule 22, promulgated at February Term, 1810, 1 Wheat. xviii., 1 Pet. viii. It was in these words:

“*Ordered*, That upon the reversal of a judgment or decree of the circuit court, the party in whose favour the reversal is, shall recover his costs in the circuit court.”

This Original General Rule 22 was subsequently embodied in Rule 47 promulgated at January Term, 1838, 12 Pet. vii., which Rule was in these words, viz.:

“In all cases of reversals of any judgment or decree in this Court, except where the reversal shall be for want of jurisdiction, costs shall be allowed in this Court for the plaintiff in error, or appellant, as the case may be, unless otherwise ordered by the Court.”

This Original General Rule 47 appeared *totidem verbis* as the third clause of Original General Rule 45 in 1 How. xxxvii.

In the Revision of December Term, 1858, 21 How. xiv., this Original General Rule 47 appeared as Clause 3 of General Rule 24, the only difference between the two being that in the Revision the words, “except where the reversal shall be for want of jurisdiction,” appearing in Original General Rule 47, were omitted.

By an amendment promulgated April 18th, 1864, 1 Wall. v., the third clause of General Rule 24 of the Revision of December Term, 1858, was amended so that its first sentence read as the first sentence of Clause 3 of the present General Rule 24, except that the words “as the case may be” occurred after the word “appellant.”

The second sentence of Clause 3 of the present General Rule 24 first appeared in any form as the second sentence of the amendment to General Rule 24, promulgated April 18th, 1864, 1 Wall. v., which was in these words:

“The costs of the transcript of the record from the court below shall be a part of such costs.”

In the Revision of May 1st, 1871, the second sentence of Clause 3 of General Rule 24 is precisely the same as the second sentence of Clause 3 of the present General Rule 24. For this Clause in the Revision of 1884 see 108 U. S. 587.

FEDERAL STATUTES.

See the Federal Statutes quoted under Clause 1, Rule 24, and also the following:

“There shall be taxed against the losing party in each and every cause pending in the Supreme Court of the United States or in the Court of Claims of the United States, the cost of printing the record in such case, which shall be collected, except when the judgment is against the United States, by the clerks of said courts respectively, and paid into the Treasury of the United States; but this shall only apply to records printed after the first of October next.”

Act of Congress of 3 March, 1877, ch. 105, sec. 1, 19 Stat. at Large, 344.

AUTHORITIES.

PRIOR TO THE ADOPTION OF ORIGINAL GENERAL RULE 22, IN 1810.

1. In an Admiralty case the Supreme Court on reversal directed that against the plaintiff in error the costs of the Circuit Court be recovered, one half against one plaintiff and the other half against the other plaintiffs in error, but that in the Supreme Court the parties pay their own costs.

Penhallow v. Doane's Administrators, 3 Dallas, 54 (120). (February Term, 1795.)

2. A case where judgment was reversed for want of jurisdiction, and with costs, under authority of *Winchester v. Jackson*, 3 Cranch, 515 (Authority No. 2 under Clause 1, Rule 24), but the Supreme Court subsequently gave this general direction, among others, to the Clerk, viz:

“That in cases of reversal, costs do not go of course, but in all cases of affirmance they do.”

Montalet v. Murray, 4 Cranch, 47. (February Term, 1807.)

[See same case under Clauses 1 and 2, Rule 24.]

3. A case where, on the judgment being reversed, the CHIEF JUSTICE, in answer to a question by counsel, stated that if the plaintiff in error should obtain a judgment in the court below, it would, of course, be with costs; and that in all cases of reversal, if the Supreme Court direct the court below to enter judgment for the plaintiff in error, the court below will of course enter the judgment with the costs of that court.

NOTE: The first Original General Rule 22 on this subject was promul-

gated at February Term, 1810, 1 Wheat. xviii., see History *supra*, and the Rule appears to have been promulgated at about the time of this decision.

M'Knight v. Craig's Administrator, 6 Cranch, 183 (187). (February Term, 1810.)

4. A prize case where, although the decree was reversed, the Supreme Court states that it is one of those cases in which, by the course of admiralty, they will be obliged to throw the costs and expenses upon the claimant, although they decree restitution; and that it is the claimants' misfortune, not that of the captors, that an agent had furnished the vessel with defective documents which accompanied her.

"*The Venus*," 5 Wheat. 127 (131). (February Term, 1820.)

AUTHORITIES AFTER THE ADOPTION OF ORIGINAL GENERAL RULE 22 IN 1810.

5. A case in which the Supreme Court say that in respect to costs, upon cases brought to the Supreme Court, the Rule is, as may be seen in the 47th Rule of the Court prefixed to 8 Peters' Reports (this is obviously an error, as the Rule is not prefixed to 8 Peters, but to 12th Peters xii.), that in all cases of reversals of any judgment or decree in the Supreme Court, except where the reversal shall be for want of jurisdiction, costs shall be allowed in the Supreme Court for the plaintiff in error or appellant, as the case may be, unless otherwise ordered by the Court, and that the question as to costs in the Circuit Court in this case was not before the Supreme Court. Judgment in the court below was reversed.

Bradstreet v. Potter, 16 Pet. 317 (318). (January Term, 1842.)

6. A case where the appellant was decreed costs in the Supreme Court by the established Rule and practice of the Court as against the appellee on a reversal.

Baldwin v. Ely, 9 How. 580 (602). (January Term, 1850.)

7. A case where judgment was reversed, but without costs to either party in the Supreme Court, as the circumstances, as stated in the opinion at length, were special and particular.

Eldred v. Bank, 17 Wall. 545. (October Term, 1873.)

4. Neither of the foregoing sections shall apply to cases where the United States are a party; but in such cases no costs shall be allowed in this court for or against the United States.

HISTORY.

With the exception of the substitution of the word "sections" for "rules" this Clause is precisely the same as Original General Rule 48, promulgated at January Term, 1838, 12 Pet. vii., and given as the fourth Clause of Original General Rule 45, in 1 How. xxxvi., and as Clause 4 of

General Rule 24 of the Revisions of December Term, 1858, 21 How. xiv., and of May 1st, 1871. The "rules" referred to in Original General Rule 48 are Original General Rules 45, 46 and 47, 12 Pet. vii. For this Clause in the Revision of 1884, see 108 U. S. 587.

FEDERAL STATUTES.

See the Federal Statutes quoted under Clause 1, Rule 24, and also the following sections of the Revised Statutes relating to costs against the United States, viz., §§ 969, 976 and 981, on pp. 183 and 184 of the Revised Statutes (Second Edition).

AUTHORITIES.

PRIOR TO THE ADOPTION OF ORIGINAL GENERAL RULE 48 IN 1838.

1. An admiralty case where the Supreme Court affirmed the judgment of the Circuit Court against the United States *with costs*, but on the opening of the Court the next day, the CHIEF JUSTICE directed the words "with costs" to be struck out of the entry, as there appeared to have been some cause for the prosecution. He observed, however, that in doing this, the Court did not mean to be understood, as, at all, deciding the question, whether, in any case, they could award costs against the United States; but left it entirely open for future discussion.

The United States v. "La Vengeance," 3 Dallas, 297 (301). (August Term, 1796.)

2. In a suit in equity brought by the United States, the court below dismissed the bill, as against certain defendants, with costs to them. The decree of the Circuit Court was affirmed. After the opinion was given it was stated that the court below had decreed the United States to pay costs, and it was suggested that that circumstance might have escaped the notice of the Supreme Court, in affirming the decree generally. The attorney for the United States contended that costs were only given by statute, that the United States are not bound by a statute unless they are expressly named in it, and that there are no means of compelling the United States to pay them. CHIEF JUSTICE MARSHALL stated that that would make no difference, because the Court were to presume the United States would pay the costs if bound by law to do so. Subsequently the Court directed the decree of the court below to be affirmed, except as to costs, and reversed so much of the decree as awarded the United States to pay costs, and directed that no costs be allowed to either party in the Supreme Court.

United States v. Hooe, 3 Cranch, 73 (92). (February Term, 1805.)

3. A case where the defendant in error moved for costs where the writ of error^{*} was dismissed. The writ was dismissed without costs, the Supreme Court stating that the United States never pay costs.

The United States v. Barker, 2 Wheat. 395. (February Term, 1817.)

4. It is a general rule that no court can make a direct judgment or decree against the United States, for costs and expenses, in a suit to which the United States is a party, either on behalf of any suitor, or any officer of the Government; the law expressly provides a different mode.

“*The Antelope*,” 12 Wheat. 546 (550). (January Term, 1827.)

5. It is undoubtedly a general rule, that no court can give a direct judgment against the United States for costs, in a suit to which they are a party, either on behalf of any suitor, or any officer of the Government; but it by no means follows, from this, that they are not liable for their own costs. No direct suit can be maintained against the United States. But when an action is brought by the United States to recover money in the hands of a party, who has a legal claim against them, it would be a very rigid principle, to deny him the right of setting up such claim in a court of justice, and turn him round to an application to Congress.

United States v. Ringgold, 8 Pet. 150 (163). (January Term, 1834.)

SUBSEQUENT TO THE ADOPTION OF ORIGINAL GENERAL RULE 48 IN 1838.

6. Cases wherein it is declared that in the court below the United States, being a party to an action, are not liable for costs.

United States v. McLemore, 4 How. 286. (January Term, 1846.)

United States v. Boyd, 5 How. 29. (January Term, 1847.)

5. In all cases of the dismissal of any suit in this court, it shall be the duty of the clerk to issue a mandate, or other proper process, in the nature of a *procedendo*, to the court below, for the purpose of informing such court of the proceedings in this court, so that further proceedings may be had in such court as to law and justice may appertain.

HISTORY.

With the exception of some immaterial verbal alterations this Clause is in the same language as Original General Rule 49, promulgated at January Term, 1838, 12 Pet. vii., given also as the fifth Clause of Original General Rule 45 in 1 How. xxxvii., and as Clause 5 of General Rule 24 in the Revisions of December Term, 1858, 21 How. xiv., and of May 1st, 1871. For this Clause in the Revision of 1884, see 108 U. S. 587.

FEDERAL STATUTES.

“Sec. 701. The Supreme Court may affirm, modify, or reverse any judgment, decree, or order of a circuit court, or district court acting as a circuit court, or of a district court in prize causes, lawfully brought before it for review, or may direct such judgment, decree,

or order to be rendered, or such further proceedings to be had by the inferior court, as the justice of the case may require. The Supreme Court shall not issue execution in a cause removed before it from such courts, but shall send a special mandate to the inferior court to award execution thereupon."

Revised Statutes (Second Edition), § 701, p. 131; Act of Congress of 24th September, 1789, ch. 20, sec. 24, 1 Stat. at Large, 85; Act of Congress of 3d March, 1803, ch. 40, sec. 2, 2 Stat. at Large, 244; Act of Congress of 30th June, 1864, ch. 174, sec. 13, 13 Stat. at Large, 310; Act of Congress of 1st June, 1872, ch. 255, sec. 2, 17 Stat. at Large, 196.

"Sec. 703. In all cases when the judgment or decree of any court of a Territory might be reviewed by the Supreme Court on writ of error or appeal, such writ of error or appeal may be taken, within the time and in the manner provided by law, notwithstanding such Territory has, after such judgment or decree, been admitted as a State; and the Supreme Court shall direct the mandate to such court as the nature of the writ of error or appeal requires."

Revised Statutes (Second Edition), § 703, p. 132; Act of Congress of 12th June, 1858, ch. 154, sec. 18, 11 Stat. at Large, 328; Act of Congress of 7th April, 1874, ch. 80, sec. 2, 18 Stat. at Large, 27.

"Sec. 704. The judgments or decrees of any district court, in cases transferred to it from the superior court of any Territory, upon the admission of such Territory as a State, under sections five hundred and sixty-seven and five hundred and sixty-eight, may be reviewed and reversed or affirmed upon writs of error sued out of, or appeals taken to, the Supreme Court, in the same manner as if such judgments or decrees had been rendered in said superior court of such Territory. And the mandates and all writs necessary to the exercise of the appellate jurisdiction of the Supreme Court in such cases shall be directed to such district court, which shall cause the same to be duly executed and obeyed."

Revised Statutes (Second Edition), § 704, p. 132; Act of Congress of 22d February, 1847, ch. 17, sec. 1, 9 Stat. at Large, 128; Act of Congress of 22d February, 1848, ch. 12, sec. 2, 9 Stat. at Large, 212.

"Sec. 705. The final judgment or decree of the Supreme Court of the District of Columbia, in any case where the matter in dispute, exclusive of costs, exceeds the value of one thousand dollars, may be re-examined and reversed or affirmed in the Supreme Court of the United States, upon writ of error or appeal, in the same manner and under the same regulations as are provided in cases of writs of error on judgments, or appeals from decrees rendered in a circuit court."

Revised Statutes (Second Edition), § 705, p. 132; Act of Congress of 27th February, 1801, ch. 15, sec. 8, 2 Stat. at Large, 106; Act of Congress of 3d March, 1863, ch. 91, sec. 11, 12 Stat. at Large, 764.

"Sec. 1040. Whenever a judgment of death is rendered in any court of the United States, and the case is carried to the Supreme Court in pursuance of law, the court rendering such judgment shall, by its order, postpone the execution thereof from time to time and from term to term, until the mandate of the Supreme Court in the case is received and entered upon the records of such lower court. In case of affirmance by the Supreme Court, the court rendering the original judgment shall appoint a day for the execution thereof; and in case of reversal, such further proceedings shall be had in the lower court as the Supreme Court may direct."

Revised Statutes (Second Edition), § 1040, p. 192; Act of Congress of 3d March, 1869, ch. 142, 15 Stat. at Large, 338.

AUTHORITIES.

MORE ESPECIALLY RELATING TO THE RULE.

1. A case where an appeal being dismissed, the Clerk was directed to certify the decision to the District Court.

The Supreme Court also *held* that no appeal would lie from a decree of the court below, entered according to the mandate.

United States v. Fremont, 18 How. 30. (December Term, 1855.)

RELATING TO MANDATES GENERALLY, AND TO PROCEEDINGS THEREUNDER AND THEREAFTER.

NOTE.—It is a matter of practice in the Supreme Court, though not the subject of any written Rule, that a mandate in any case is never sent to the Court below during the term at which the judgment of the Supreme Court is rendered, unless on motion and a special order entered thereon. But it is usual for the Court, when it takes its February recess, to order mandates to be sent in all cases decided before January 1st preceding, where counsel shall so request. When the Court adjourns at the end of the term, it orders mandates to be sent in all decided cases, where counsel shall so request. But a mandate is never sent where a petition for a rehearing has been filed, till it is disposed of.

2. A case where, the Supreme Court having, in general terms, reversed the judgment of the High Court of Appeals of Maryland, and affirmed the judgment of the General Court, the question arose, among others, to which of the State Courts the mandate should be sent. The mandate for execution was issued to the General Court.

Clerke v. Harwood, 3 Dallas, 342. (February Term, 1797.)

[See same case under Clause 2, Rule 24.]

3. A case where it was held that upon an appeal from a mandate, nothing is before the Supreme Court but the proceedings subsequent to the mandate.

Himely v. Rose, 5 Cranch, 313 (314, 316). (February Term, 1809.)

4. In a case where a final decree was pronounced in the court below, which was reversed by the Supreme Court, and a mandate issued by the Supreme Court to the court below, and where the court below, upon the mandate, certified these facts, and also that after the cause was sent back it was discovered to be a cause not within the jurisdiction of the court, but that a question arose whether it could now be dismissed for want of jurisdiction after the Supreme Court had acted thereon, the Supreme Court directed the following opinion to be certified by the court below, viz.: "It appearing that the merits of this cause had been finally decided in this Court, and that its mandate required only the execution of its decree, it is the opinion of this Court, that the Circuit Court is bound to carry that decree into execution, although the jurisdiction of that Court be not alleged in the pleadings."

Skillem's Executors v. May's Executors, 6 Cranch, 267. (February Term, 1810.)

[See same case under Rule 30.]

5. A case where the Supreme Court denied a motion for a rehearing on the ground that it was too late to grant a rehearing in a case that had been remitted to the Court below to carry into effect the decree of the Supreme Court according to its mandate, and *held* that a subsequent appeal from the Circuit Court for supposed error in carrying into effect such mandate, brought up only the proceedings subsequent to the mandate and did not authorize an inquiry into the merits of the original decree.

Browder v. M'Arthur, 7 Wheat. 58. (February Term, 1822.)

[See same case under Rule 30.]

6. Upon an appeal from a mandate to carry into effect the former decree of the Supreme Court, nothing is before the Court but the proceedings subsequent to the mandate (citing *Himely v. Rose*, 5 Cranch, 313, Authority No. 3 under this Clause of Rule 24), but the original proceedings are always before the Court, so far as they are necessary to determine any new points, or rights in controversy between the parties which were not terminated by the original decree. The Court may, therefore, inspect the original proceedings to ascertain the merits or demerits of the parties, so far as they bear on the new claims, and must decide, upon the whole examination, what its duty requires.

"*The Santa Maria*," 10 Wheat. 431 (442). (February Term, 1825.)

7. A peculiar case where the Supreme Court stated that it was difficult to perceive how, under the peculiar circumstances of the case, as stated at length in the opinion, the court below (the Court for the correction of errors of the State of New York) could conform its judgment to that of the Supreme Court, otherwise than by quashing its writ of error to the Supreme Court of the State, which it did.

Davis v. Packard, 8 Pet. 312 (324). (January Term, 1834.)

8. Cases in which a special mandate was made out.

Mitchel v. The United States, 9 Pet. 711 (761). (January Term, 1835.)

Soulard v. The United States, 10 Pet. 100 (105). (January Term, 1836.)

9. A case which, when formerly before the Supreme Court [8 Pet. 148] was dismissed for want of jurisdiction of the Circuit Court by reason of the omission to allege that the parties were citizens of different States. A motion was subsequently made in the Supreme Court for liberty to amend the record by stating the citizenship of the defendant, and to reinstate the cause on the docket. The Court denied the motion, stating that to permit the amendment would, in effect, be a reversal of the former decree of the Supreme Court, for that Court has no power over its decrees that are rendered after the term has passed, and the cause has been dismissed, or otherwise finally disposed of in the Supreme Court. The Supreme Court points out, however, that the Circuit Court might permit the amendment to be made, and then rehear the case, and that from a new decree a new appeal might be taken and the matter reheard.

Jackson v. Ashton, 10 Pet. 480. (January Term, 1836.)

[See same case under Rule 30.]

10. A case in which the Supreme Court, after referring to the decision in the case of *Skillearn's Executors v. May's Executors*, 6 Cranch, 267 (Authority No. 4 under this Clause of Rule 24), stated that in the case then before the Court, the merits of the controversy had previously been finally decided by the Supreme Court, and that its mandate to the District Court required only the execution of its decree, and that the facts stated by the defendant could not in that stage of the proceedings form any defence against the execution of the mandate.

Ex parte Story, 12 Pet. 339 (343). (January Term, 1838.)

11. On a motion to reform the mandate, the Supreme Court, after stating that when they have executed their power in a cause before them, and their final decree or judgment requires some further act to be done, they cannot issue an execution but will send a special mandate to the court below, *held*, however, that in this case the mandate which was issued by the Clerk, was no execution of their final decree, and as it remained unexecuted, it was not too late to have a new mandate issued, and the Clerk was accordingly directed to issue a mandate according to the final decree theretofore rendered.

Ex parte Sibbald v. The United States, 12 Pet. 488 (495). (January Term, 1838.)

[See same case under Rule 30.]

12. The mandate issued by the Supreme Court, in a case decided by the Court, is to be interpreted according to the subject matter, and it is in no manner to cause injustice.

Story v. Livingston, 13 Pet. 359. (January Term, 1839.)

13. The mandate from the Supreme Court must be the guide to the Circuit Court. It is the judgment of the Supreme Court transmitted to the Circuit Court; and where the direction contained in the mandate is precise and unambiguous, it is the duty of the Circuit Court to carry it into execution, and not to look elsewhere for authority to change its meaning; but where, as in this case, the Circuit Court are referred to testimony to ascertain the amount to be decreed, and are authorized to take more evidence on the point, it may sometimes happen that there may be some uncertainty and ambiguity on the point, and in such a case the court below has unquestionably the right to resort to the opinion of the Supreme Court delivered at the time in order to assist them in expounding it.

West v. Brashear, 14 Pet. 51. (January Term, 1840.)

14. The meaning of a mandate may be ascertained from the instrument itself; but the reasons which induced the Supreme Court to make it are to be found in the evidence contained in the original record. The Supreme Court says that it will do what it did in the case of *Sibbald*, 12 Pet. 493 (Authority No. 11 under this Clause of Rule 24); also citing "*The Santa Maria*," 10 Wheat. 431 (Authority No. 6 under this Clause of Rule 24.)

Mitchel v. The United States, 15 Pet. 52 (84). (January Term, 1841.)

15. A case where on appeal a decree of the Circuit Court was reversed under the belief that a citation had been regularly issued and served on the appellee, and it appeared subsequently that the appellee was not cited in the manner required by the Act of Congress. Upon the facts of the case the Supreme Court stated that it was very clear, that the case was not legally before them at the last term, and that the decree pronounced must be declared null and void, and the mandate issued to the Circuit Court revoked.

Ex parte Orenshaw, 15 Pet. 119 (123). (January Term, 1841.)

16. When there is an appeal from a decree entered on a mandate from the Supreme Court, the Supreme Court can consider on a subsequent appeal nothing but the proceedings subsequent to the mandate. It is too late then to allege that the Court had not jurisdiction to try the first appeal. The Supreme Court has no power to review its own decisions.

The cases of *Himely v. Rose*, 5 Cranch, 314, and *Skillern's Executors v. May's Executors*, 6 Cranch, 267 (Authorities Nos. 3 and 4 under this Clause of Rule 24), discussed.

Washington Bridge Co. v. Stewart, 3 How. 413 (424). (January Term, 1845.)

17. A case where the appellee moved the Supreme Court to dismiss the second appeal in the record from the order of the Circuit Court overruling a motion to open the decree and grant a rehearing, and also to award a writ of *procedendo* commanding the Circuit Court to proceed and execute the first decree. The motion was denied, the Supreme Court stating that as it is now presented by the record, they see no ground for a mandate

to the Circuit Court; that no application has been made to them to carry the decree into execution, or to stay proceedings on it pending the appeal, and the Supreme Court are bound to presume that the court below will do whatever may be right in the premises, if the subject is properly brought before it, and they cannot, in advance, undertake to guide the judgment of the court below by a mandate.

Wyllie v. Cox, 14 How. 1. (December Term, 1852.)

18. Where the court below entered a decree according to the mandate of the Supreme Court, this furnished no ground for an appeal, and the case was dismissed upon that ground.

United States v. Fremont, 18 How. 30. (December Term, 1855.)

19. When a case is sent to the court below, by a mandate from the Supreme Court, no appeal will lie from any order or decision of the court below until it has passed its final decree in the case; and if the court below does not proceed to execute the mandate or disobeys or mistakes its meaning, the party aggrieved may, by motion for a mandamus at any time, bring the errors or omissions of the inferior court before the Supreme Court for correction.

United States v. Fossatt, 21 How. 445 (446). (December Term, 1858)

[See same case under Clause 5, Rule 26.]

20. A case where the Supreme Court directed that the order for docketing and dismissing the case should be vacated, and the mandate which followed it should be recalled, as the Court was satisfied from the evidence before it that no appeal had been granted by the court below, and that the cause was not properly before it when the order was made at the instance of the appellee to docket and dismiss the case.

United States v. Gomez, 23 How. 326. (December Term, 1859.)

21. The 24th Section of the Judiciary Act of 1789 governs the practice in cases brought up and reviewed in the Supreme Court, which is bound to give such judgment as the court below ought to have given, and the law directs that a mandate shall be sent down to have the judgment entered as final in the lower courts, when it is for the defendant below, as in the Supreme Court. The District Court has no power to set aside the judgment of the Supreme Court, its authority extending only to executing the mandate. A writ of *mandamus* was accordingly issued to the court below commanding it to vacate and erase the order granting a new trial, and that a judgment be entered in conformity to the mandate of the Supreme Court.

Ex parte Dubuque and Pacific Railroad, 1 Wall. 69 (73). (December Term, 1863.)

22. A mandate must not be so closely followed by the court below as to work injustice.

Railroad Company v. Soutter, 2 Wall. 510. (December Term, 1864.)

23. The judgment of an inferior court when affirmed by the Supreme Court is only conclusive as between the parties upon the matters involved. Regarded simply as an adjudication between them it is not open to question. It must be followed and obeyed. The inferior court cannot reopen the case and allow new proceedings to be taken or further evidence to be given, or new defences to be offered, upon any ground whatever. It must execute the judgment or decree, and only for that purpose has it any authority over it. Such judgment or decree, however, does not conclude the rights of third parties not before the Supreme Court, or in any respect affect their rights.

In the Matter of Howard, 9 Wall. 175 (183). (December Term, 1869.)

24. A mandate of the Supreme Court must be obeyed by the court below as far as practicable. In this case a writ of *mandamus* was sent to the District Court directing it to proceed to execute the mandate of the Supreme Court in conformity to the opinion.

Ex parte Morris and Johnson, 9 Wall. 605. (December Term, 1869.)

25. Rehearings are never granted when a final decree has been entered and the mandate sent down, unless the application is made at the same term, except in cases of fraud. Citing *Washington Bridge Co. v. Stewart*, 3 How. 424; *Ex parte Sibbald*, 12 Pet. 462 (Authorities Nos. 16 and 11 respectively under this Clause of Rule 24).

Noonan v. Bradley, 12 Wall. 121 (129.) (December Term, 1870.)

[See same case under Rule 30.]

26. A case which came to the Supreme Court a second time after its mandate had been once issued. Pursuant to the mandate of the Supreme Court, remanding the cause, the Supreme Court of the State reversed their former decree reversing the judgment and decree of the Court of Common Pleas and dismissing the petition; but they did not proceed and dispose of the case in conformity to the opinion of the Supreme Court as directed in the mandate. The Supreme Court in its opinion states: "By the directions of the mandate they were as much bound to proceed and dispose of the case in conformity to the opinion of this Court as to reverse their former decree, but instead of that they entered a new decree dismissing the petition, which in effect evades the directions given by this Court, and practically reverses the judgment and decree which the mandate directed them to execute. Argument to show that a subordinate court is bound to proceed in such an event and dispose of the case as directed, and that they have no power either to evade or reverse the judgment of this Court, is unnecessary, as any other Rule would operate as a repeal of the Constitution and laws of Congress passed to carry the judicial power conferred by the Constitution into effect. . . .

Repeated decisions of this Court have established the Rule that a final judgment or decree of this Court is conclusive upon the parties, and that it cannot be re-examined at a subsequent term, except in cases of fraud,

as there is no Act of Congress which confers any such authority. Second appeals or writs of error are allowed, but the rule is universal that they bring up only the proceedings subsequent to the mandate, and do not authorize an inquiry into the merits of the original judgment or decree. Rehearings are never granted where a final decree has been entered and the mandate sent down, unless the application is made at the same term, except in cases of fraud. . . . On receipt of the mandate it is the duty of the subordinate court to carry it into execution even though the jurisdiction do not appear in the pleadings. . . .

Brought here as the cause is by a second writ of error, it is settled law in this Court that nothing is brought up for re-examination and revision except the proceedings of the subordinate court subsequent to the mandate. It has been settled, by the decisions of this Court, that after a case has been brought here and decided and a mandate issued to the court below, if a second writ of error is sued out it brings up for revision nothing but the proceedings subsequent to the mandate. None of the questions which were before the Court on the first writ of error can be reheard or examined upon the second, as it would lead to endless litigation."

Tyler v. Magwire, 17 Wall. 253 (282). (December Term, 1872.)

27. In a case which had once come before the Supreme Court when the mandate had been sent down, the Court denied the petition for a *mandamus*, stating that their action only precluded the court below from adjudging in favor of the defendants upon the special facts found and sent to the Supreme Court for their opinion; that in all other respects, the court below was at liberty to proceed in such manner as, according to its judgment, justice might require.

Ex parte French, 91 U. S. 423 (426). (October Term, 1875.)

28. It is settled in the Supreme Court that whatever has been decided there upon one appeal, cannot be re-examined in a subsequent appeal in the same suit; such subsequent appeal brings up for consideration only the proceedings of the Circuit Court after the mandate of the Supreme Court.

Supervisors v. Kennicott, 94 U. S. 498. (October Term, 1876.)

29. While the Supreme Court will not hesitate to set aside a decree collusively obtained, the proof ought to be very clear to induce it to do so at the instance of strangers to the suit, though incidentally affected by the decision of the questions involved.

Cochrane v. Deener, 95 U. S. 355. (October Term, 1877.)

30. Where an appeal was taken from a decree entered upon the mandate of the Supreme Court and no complaint was made as to its form, and it seemed to be in all respects according to the directions of the Supreme Court, the appeal will be dismissed, the Supreme Court *holding* that the

rights of the parties and the subject matter of the suit were finally determined upon the former appeal, and that, while a party may, if he be aggrieved, appeal from the final decree entered in the court below, yet such appeal will bring up for re-examination only the proceedings subsequent to the mandate.

Stewart v. Salamon, 97 U. S. 361 (362). (October Term, 1878.)

[See same case under Clause 1, Rule 24.]

31. An appeal dismissed under the Rule established in *Stewart v. Salamon*, 97 U. S. 361 (362) (Authority No. 30 under this Clause of Rule 24), as it was an appeal from a decree entered below in accordance with the prior mandate of the Supreme Court.

Humphrey v. Baker, 103 U. S. 736. (October Term, 1880.)

32. A case wherein the Supreme Court in delivering their opinion used this language:

“Although this Court reversed the first judgment, and remanded the cause for a new trial, and a new trial has been had, with a new judgment, the plaintiffs in error now urge, without having raised the point before, that this Court, instead of having awarded a new trial, should have rendered a judgment for the defendants below on the findings made by the Circuit Court at the first trial, and that it should now do so. The question is not open for this Court to review on this writ of error the judgment it rendered on the former writ of error. That judgment has been carried into effect, and the parties who procured it have enjoyed the benefit of it in the new trial they have had.”

Ames v. Quimby, 106 U. S. 342 (349). (October Term, 1882.)

33. It has long been settled that whatever has been decided in the Supreme Court on one writ of error cannot be re-examined on a subsequent writ brought in the same suit. Citing *Supervisors v. Kennicott*, 94 U. S. 498, and *Himely v. Rose*, 5 Cranch, 313 (Authorities Nos. 28 and 3 respectively under this Clause of Rule 24).

Clark v. Keith, 106 U. S. 464. (October Term, 1882.)

34. Four cases which at October Term, 1881, were dismissed on application of the Government, by whose direction the cases were brought to the Supreme Court; there was no affirmance of the judgments below, and the judgments and mandates of the Supreme Court contained no direction as to interest on the judgments below during the time the writs of error were pending. The judgments were rendered in 1878. In the Dodge case, the mandate was issued, but was never presented to the court below. In the other cases, the mandates were issued and presented to the court below, and orders for judgment were entered thereon. In the Dodge case, counsel for the defendants in error were present in the Supreme Court when the case was dismissed; but in the other cases, no counsel for the defendants in error were present, and the mo-

tions to dismiss were made without their knowledge, and the mandates were not issued till after the close of the term. Application was made at the October Term of the Supreme Court by the defendants in error to correct the judgments and mandates in these cases so as to award to them interest as such or as damages for delay. The Court denied the application, stating that they had no power to vary the judgments or mandates after the close of the term, no especial right to do so in these cases having been reserved, and that it has always been held in the Supreme Court that it has no power after the term has passed, and the case been dismissed or otherwise finally disposed of, to alter its judgment in such a particular as that now asked for, *viz.* : the change of a dismissal of a writ of error with its legal consequences, to an affirmance of the judgment below with its legal consequences, and not an error of mere form, or a clerical error, or a misprision of the clerk, or the like.

Schell v. Dodge, Barney v. Isler, Barney v. Cox, Barney v. Friedman, 107 U. S. 629. (October Term, 1882.)

[See same case under Clauses 1 and 2, Rule 23.]

35. The final decree in the case of *Blake v. Hawkins*, 98 U. S. 315, was reversed by the Supreme Court, and the cause was remanded with directions to take further proceedings, and enter a decree in accordance with the opinion of the Supreme Court, as then declared. The subsequent proceedings and decree upon the mandate were thereafter brought before the Supreme Court for review, on the ground that they did not, in several particulars, conform to that mandate. The Supreme Court approved the decree of the Circuit Court, in effect *holding* that it was entered in accordance with the judgment of the Supreme Court, and a subsequent agreement of the parties to the suit.

Hawkins v. Blake, 108 U. S. 422. (May 7th, 1883.)

[See also the authorities cited under Rule 30, where applicable.]

6. When costs are allowed in this court, it shall be the duty of the clerk to insert the amount thereof in the body of the mandate, or other proper process, sent to the court below, and annex to the same the bill of items taxed in detail.

HISTORY.

This Clause is in precisely the same language as Original General Rule 50 promulgated at January Term, 1838, 12 Pet. vii., and given as the sixth Clause of Original General Rule 45, in 1 How. xxxvi., and is also precisely the same as Clause 6 of General Rule 24 as contained in the Revisions of December Term, 1858, 21 How. xiv., and of May 1st, 1871. For this Clause in the Revision of 1884, see 108 U. S. 587.

7. In pursuance of the Act of March 3, 1883, authorizing and empowering this court to prepare a table of fees to be charged by the clerk of this court, the following table is adopted :

For docketing a case and filing and indorsing the transcript of the record, five dollars.

For entering an appearance, twenty-five cents.

For entering a continuance, twenty-five cents.

For filing a motion, order, or other paper, twenty-five cents.

For entering any rule, or for making or copying any record or other paper, twenty cents per folio of each one hundred words.

For transferring each case to a subsequent docket and indexing the same, one dollar.

For entering a judgment or decree, one dollar.

For every search of the records of the court, one dollar.

For a certificate and seal, two dollars.

For receiving, keeping, and paying money in pursuance of any statute or order of court, two per cent. on the amount so received, kept, and paid.

For an admission to the bar and certificate under seal, ten dollars.

For preparing the record or a transcript thereof for the printer, indexing the same, supervising the printing, and distributing the printed copies to the justices, the reporter, the law library, and the parties or their counsel, fifteen cents per folio.

For making a manuscript copy of the record, when required under Rule 10, twenty cents per folio, but nothing in addition for supervising the printing.

For issuing a writ of error and accompanying papers, five dollars.

For a mandate or other process, five dollars.

For filing briefs, five dollars for each party appearing.

For every copy of any opinion of the court or any justice thereof, certified under seal, one dollar for every printed page, but not to exceed five dollars in the whole for any copy.

HISTORY and FEDERAL STATUTES.

This Clause is entirely new. 108 U. S. 587.

NOTE.—For Circular Letter of Clerk of the Supreme Court so far as it relates to paragraph 13 of this Clause, see Clause 1, Rule 10.

By Section 3 of an Act of Congress approved February 28th, 1799, 1 Stat. at Large, ch. 19, sec. 3, p. 625, it is provided as follows, viz.:

“Sec. 3. *And be it further enacted*, That the compensation to the clerk of the Supreme Court of the United States, shall be as follows, to wit: for his attendance in Court, ten dollars per day, and for his other services, double the fees of the Clerk of the supreme court of the state in which the Supreme Court of the United States shall be holden.”

Under this provision the fees of the Clerk of the Supreme Court of the United States were, prior to the Act of Congress of March 3d, 1883, referred to more fully below, double the fees of the Clerk of the highest court in the State of Maryland. By an Act of Congress approved March 3d, 1883, entitled “An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and eighty-four, and for other purposes” (22 Stat. at Large, chap. 143, pp. 603, 631), it is provided under the title “Judicial” as follows:

“For fees of clerks, one hundred and sixty thousand dollars. . . . *Provided*, That the Clerk of the Supreme Court of the United States shall not thereafter retain of the fees and emoluments of his office for his personal compensation over and above his necessary clerk-hire and the incidental expenses of his office, certified to by the court, or by one of its justices appointed by it for that purpose, and to be audited and allowed by the proper accounting officers of the Treasury, a sum exceeding six thousand dollars a year, or exceeding that rate for any time less than a year; and the surplus of such fees and emoluments shall be paid into the Treasury as provided by law in cases of clerks of the circuit and district courts of the United States: *and provided further*, That so much of section three of the Act of February twenty-eighth, seventeen hundred and ninety-nine, as relates to the compensation of said clerk for his attendance in court is hereby repealed: *and provided further*, That the Supreme Court is hereby authorized and empowered to prepare the table of fees to be charged by the clerk thereof, and until the same is thus prepared the fees therein charged for recording or copying any paper or record shall not exceed fourteen cents per folio.”

The question of the fees of the Clerk was fully discussed by the Supreme Court at the October Term, 1882, prior to the present Revision, and an opinion was delivered by MR. CHIEF-JUSTICE WAITE with reference thereto, which, as it is of interest to the profession, is printed *in extenso*. As the opinion provides for amendments to General Rules 1 and 10, see also the History of those General Rules, and of each Clause thereof, in connection with this opinion.

MR. CHIEF-JUSTICE WAITE delivered the opinion of the Court:

"Our attention has been called to the practice which prevails in the clerk's office of sending original records to the printer to be printed, and of taxing in the bills of costs a fee for one manuscript copy of the record, when no such copy is in fact made.

"On investigation we find that the statute regulating the fees of the clerk was passed in 1799, and that under this statute a table of fees was prepared, many years ago, by or under the direction of the court, which has been followed by the clerk in the taxation of costs ever since. No provision was made, by rule or otherwise, for printing the records, until January term, 1831. Before that time the practice was, as we are informed, for the court to use the original record, and the clerk made two manuscript copies for the use of the parties. For these copies he charged the parties according to the established table of fees. At January term, 1831, the Attorney-General, in behalf of the United States, applied to the court for leave to take the original records in certain cases from the clerk's office to be printed, at the same time remarking that he had been informed that in such cases it had been the habit of the clerk to charge half fees. CHIEF-JUSTICE MARSHALL, speaking for the court, stated 'that the clerk of this court had certain rights and fees of office, (of which a fee for a copy of the record was one,) which this court was not disposed to violate; and that the party could not withdraw the records without paying for the copies, but that any arrangement which the clerk saw proper to make would be satisfactory to the court.' The original records in these cases were afterwards taken to the printer and printed, and the clerk charged and was paid full fees for one manuscript copy.

"At the same term the first rule for printing the records was adopted, which provided for the taxation of the fees for one manuscript copy of the record in the bill of costs. When this rule was promulgated the court consisted of CHIEF-JUSTICE MARSHALL and ASSOCIATE JUSTICES JOHNSON, STORY, THOMPSON, MCLEAN, and BALDWIN. MR. JUSTICE BALDWIN dissented on this provision of the rule, for the reason, among others, that it allowed the clerk a fee for a copy whether one was made or not.

"Under the rule thus adopted the printing of records began, and from the first the original records were sent to the printer, and a fee for one manuscript copy was charged in the costs, when in fact no copies were made. There is abundant evidence that at the outset this practice was directly or indirectly approved by the court. In 1839 the House of Representatives instructed the Judiciary Committee to 'inquire what costs are charged against the United States for printed copies of records of suits pending in the Supreme Court which have been printed at the expense of the United States, . . . and whether any legislation is necessary in relation to costs of suits in said court.' The committee reported, submitting a statement of the clerk on the subject, and was discharged. From this statement of the clerk, and from other evidence on file, we are satisfied the committee, or some of its members, visited the

office during the progress of their enquiries, and possessed themselves fully of the mode of doing the business and of the compensation therefor.

"In 1859 the rules were revised by CHIEF-JUSTICE TANEY under the direction of the court, and the provision for printing the records was put into the form in which it now appears in paragraphs 2, 3, 4 and 5 of Rule 10. We are advised that prior to the death of CHIEF JUSTICE TANEY no manuscript copies of the records were ever made, and that the fee for one copy was always charged in the costs. Since the death of CHIEF-JUSTICE TANEY copies have in some cases been made. The present clerk has followed the practice of his predecessors.

"We are entirely satisfied that the practice, as it now exists, is in all material respects what it has been for more than fifty years, and that at the beginning it received the approval of the court. No one now on the bench ever heard of any complaint, or of any application for a re-taxation of costs, on account of what was done, until late in the last term, when a motion for re-taxation was made in the case of *James v. Campbell*.

"There is an apparent conflict between the rules and the practice under them which ought not to exist. It is also evident that what was fifty years ago no more than a reasonable compensation for the important services of the clerk is now, under the operation of the rules as then construed and the practice then inaugurated, larger than it ought to be. To prevent misunderstandings in the future and to reduce the expenses of litigants without doing injustice to the clerk, it is ordered—

"I. That the second clause of Rule 1 be amended so that it will read as follows:

"(See History of Clause 2, Rule 1, for the nature of the amendment.)

* * * * *

"II. That paragraphs 3, 4, 5, and 6 of Rule 10, be rescinded, and the following adopted in lieu thereof:

"(See History of Clauses 4, 5 and 7 of Rule 10 for the nature of the amendments.)"

* * * * *

In the Matter of Amendments to Rules 1 and 10, 108 U. S. 1. (November 26th, 1882.)

[See also 106 U. S. vii., where, however, these amendments are stated to have been promulgated November 13th, 1882.]

AUTHORITIES.

PRIOR TO THE ACT OF MARCH 3D, 1883.

1. A case in which the Supreme Court observed, when application was made for an allowance of \$12.50, the costs of the printed state of the case for the use of the judges, "that, however convenient it might be, there was no Rule authorizing the charge; and, therefore, it could not be allowed."

Jennings v. The Brig "Perseverance," 3 Dallas, 336 (338). (February Term, 1797.)

2. A copy of the record is not a part of the taxable costs of suit to be recovered by one party against the other; but the party who requests the copy must pay the Clerk for it.

Caldwell v. Jackson, 7 Cranch, 276. (February Term, 1812.)

SUBSEQUENT TO THE ACT OF MARCH 3D, 1882.

3. A case wherein the Supreme Court said: "As this record has been printed the case may be docketed without security for this fee" [*i.e.* the fee under the 13th paragraph of Clause 7, Rule 24], "but the printed copies cannot be delivered to the justices or the parties for use on the final hearing or on any motion in the progress of the cause unless the fee is paid when demanded by the Clerk in time to enable him to make his examinations and perform his other duties in connection with the copies."

Bean v. Patterson, 110 U. S. 401. (February 24th, 1884.)

[See this case under Clauses 1 and 2, Rule 10.]

Rule 25.

OPINIONS OF THE COURT.

1. All opinions delivered by the court shall, immediately upon the delivery thereof, be handed to the clerk to be recorded. And it shall be the duty of the clerk to cause the same to be forthwith recorded, and to deliver a copy to the reporter as soon as the same shall be recorded.

HISTORY.

This Clause had its origin in Original General Rule 42, which appears to have been promulgated at January Term, 1835. This Rule is not contained in 9 Pet., which contains opinions delivered at January Term, 1835, and where the Original General Rule should naturally appear, nor is it contained in any of Peters' Reports. It first appears in 1 How. xxxv., and its first two Clauses are in these words:

"All the opinions delivered by the Court since the commencement of the term shall be forthwith delivered over to the Clerk to be recorded.

"And all opinions hereafter delivered by the Court shall immediately, upon the delivery thereof, be in like manner delivered over to the Clerk to be recorded. And it shall be the duty of the Clerk to cause the same to be forthwith recorded, and to deliver the originals with a transcript of the judgment or decree of the Court thereon to the reporter, as soon as the same shall be recorded."

In the Revision of December Term, 1858, 21 How. xiv., Clause 1 of General Rule 25 is the same as the second Clause of Original General Rule

42, above quoted, with the exception of the omission in the Revision of the first word "and" and of the words "hereafter" and "in like manner" contained in the second Clause of Original General Rule 42.

In the Revision of May 1st, 1871, Clause 1 of General Rule 25, was the same as Clause 1 of the present General Rule 25, except that the words "delivered over" took the place of the word "handed." For this Clause in the Revision of 1884, see 108 U. S. 588.

FEDERAL STATUTES.

RELATING TO REPORTER OF SUPREME COURT.

"Sec. 386. The Department of Justice shall be charged with the distribution to the various judges and courts of the statutes, reports, and other judicial documents provided by law."

Revised Statutes (Second Edition), § 386, p. 64; Act of Congress of 3d March, 1873, ch. 238, sec. 2, 17 Stat. at Large, 578.

"Sec. 387. A register of the statutes of the United States and reports of the Supreme Court shall be kept, under the authority of the head of the Department of Justice, showing the quantity of each kind received by him from the Secretary of the Interior; and it shall be his duty to cause to be entered in such register, and at the proper time, when, where, and to whom the same, or any part of them, have been distributed and delivered, and to report the same to Congress in his annual report."

Revised Statutes (Second Edition), § 387, p. 64; Act of Congress of 3d March, 1873, ch. 238, sec. 3, 17 Stat. at Large, 578.

"Sec. 498. The Secretary of the Interior is required to furnish to the head of the Department of Justice, from time to time as they may be published, a sufficient number of the Statutes of the United States and the reports of the Supreme Court of the United States, to be by him distributed to such officers of the courts of the United States as are now or may hereafter be by law entitled to receive them."

Revised Statutes (Second Edition), § 498, p. 83; Act of Congress of 3d March, 1873, ch. 238, sec. 2, 17 Stat. at Large, 578.

"Sec. 677. The Supreme Court shall have power to appoint a clerk and a marshal for said court, and a reporter of its decisions."

Revised Statutes (Second Edition), § 677, p. 125; Act of Congress of 26th August, 1842, ch. 202, sec. 2, 5 Stat. at Large, 524; Act of Congress of 29th August, 1842, ch. 264, sec. 1, 5 Stat. at Large, 545.

"Sec. 681. The reporter shall cause the decisions of the Supreme Court made during his office to be printed and published within eight months after they are made; and, within the same time, shall

deliver three hundred copies of the volumes of said reports to the Secretary of the Interior. And he shall, in any year when he is so directed by the court, cause to be printed and published a second volume of said decisions, of which he shall deliver, in like manner and time, three hundred copies."

Revised Statutes (Second Edition), § 681, p. 125; Act of Congress of 29th August, 1842, ch. 264, sec. 1, 5 Stat. at Large, 545; Act of Congress of 21st May, 1866, ch. 88, sec. 1, 14 Stat. at Large, 51; Act of Congress of 23d July, 1866, ch. 208, sec. 1, 14 Stat. at Large, 191 (205); Act of Congress of 2d March, 1867, ch. 168, sec. 10, 14 Stat. at Large, 471.

"Sec. 682. The reporter shall be entitled to receive from the Treasury an annual salary of twenty-five hundred dollars, when his report of said decisions constitutes one volume, and an additional sum of fifteen hundred dollars when, by direction of the court, he causes to be printed and published, in any year, a second volume. But said salary and compensation, respectively, shall be paid only when he causes such decisions to be printed, published, and delivered within the time and in the manner prescribed by law, and upon the condition that the volumes of said reports shall be sold by him to the public for a price not exceeding five dollars a volume."

Revised Statutes (Second Edition), § 682, p. 126; Act of Congress of 29th August, 1842, ch. 264, sec. 1, 5 Stat. at Large, 545; Act of Congress of 21st May, 1866, ch. 88, sec. 1, 14 Stat. at Large, 51; Act of Congress of 23d July, 1866, ch. 208, sec. 1, 14 Stat. at Large, 191 (205); Act of Congress of 2d March, 1867, ch. 168, sec. 10, 14 Stat. at Large, 471; See, however, Act of Congress of 5th August, 1882, ch. 389, 22 Stat. at Large, 219 (254), quoted at length hereafter.

"Sec. 683. The three hundred copies of said reports delivered to the Secretary of the Interior shall be distributed as follows: "To the President, the justices of the Supreme Court, the circuit judges, the judges of the district courts, the judges of the Court of Claims, the judges of the Supreme Court of the District of Columbia, the judges of the several territorial courts, the Secretary of State, the Secretary of the Treasury, the Secretary of War, the Secretary of the Navy, the Secretary of the Interior, the Postmaster-General, the Attorney-General, the Solicitor-General, the Secretary of the Senate, for the use of the Senate, the Clerk of the House of Representatives, for the use of the House of Representatives, the governors of the Territories, the Commissioner of Agriculture, the Commissioner of Internal Revenue, the Commissioner of Indian affairs, the Commissioner of Pensions, the Commissioner of the General Land Office, the Commissioner of Patents, the Commissioner of Customs, the Commissioner of Education, the Paymaster-General, the First and Second Comptrollers of the Treasury, the First, Sec-

ond, Third, Fourth, Fifth, and Sixth Auditors of the Treasury, the Solicitor of the Treasury, the Register of the Treasury, the Treasurer of the United States, and the heads of such other executive offices as may hereafter be provided by law, of equal grade with any of the said officers, each one copy; to the Secretary of the Senate, for the use of the standing committees of the Senate, ten copies; and to the Clerk of the House of Representatives, for the use of the standing committees of the House, twelve copies; and the residue of said copies shall be deposited in the Library of Congress, to become a part of said Library. The copies received by any officer under this section shall, in case of his death, resignation, or dismissal from office, be delivered up to his successor in office."

Revised Statutes (Second Edition), § 683, p. 126; Act of Congress of 29th August, 1842, ch. 264, sec. 1, 5 Stat. at Large, 545; Act of Congress of 2d March, 1861, ch. 87, sec. 6, 12 Stat. at Large, 245; Act of Congress of 23d July, 1866, ch. 208, sec. 1, 14 Stat. at Large, 191 (205); Act of Congress of 15th July, 1870, ch. 292, sec. 1, 16 Stat. at Large, 291 (307).

PERMANENT ANNUAL APPROPRIATIONS.

* * * * *

"Sec. 3689. There are appropriated, out of any moneys in the Treasury not otherwise appropriated, for the purposes hereinafter specified, such sums as may be necessary for the same respectively; and such appropriations shall be deemed permanent annual appropriations.

* * * * *

JUDICIAL.

SUPREME COURT OF THE UNITED STATES.

"Salaries justices, &c., Supreme Court: To pay the reporter of the Supreme Court for three hundred copies of the second volume of the decisions of the court."

Revised Statutes (Second Edition), § 3689, pp. 724 (729).

Act of Congress of 2d March, 1867, ch. 168, sec. 10, 14 Stat. at Large, 471.

"The reporter of the decisions of the Supreme Court of the United States shall be entitled to receive from the Treasury an annual salary of four thousand five hundred dollars when his report of said decisions constitutes one volume and an additional sum of one thousand two hundred dollars when by direction of the court he causes to be printed and published in any year a second volume, and said reporter shall be annually entitled to clerk-hire in the sum of one thousand two hundred dollars, and to office rent, stationery, and contingent expenses in the sum of six hundred

dollars, and an amount sufficient for the payment of said sums is hereby appropriated: *Provided*, That the above provision shall not apply to decisions of the court pronounced at the last term thereof, but that said decisions shall be printed and the volumes containing them delivered to the Secretary of the Interior as prescribed by existing laws; and an amount sufficient to pay the salary and compensation of the reporter in connection therewith is hereby appropriated: *And provided further*, That the volumes of the decisions which said court shall hereafter pronounce shall be furnished by the Reporter to the public at a sum not exceeding two dollars per volume, and the number of volumes now required to be delivered to the Secretary of the Interior shall be furnished by the reporter without any charge therefor."

Act of Congress of 5th August, 1882, ch. 389, 22 Stat. at Large, 219 (254.)

2. The original opinions of the court shall be filed with the clerk of this court for preservation.

HISTORY.

This Clause originated in an Original General Rule, promulgated March 14th, 1834, and given without number in 8 Pet. vii., and as Rule 41 in 1 How. xxxv. It is in these words:

"Ordered, That the original opinions of the Court delivered to the reporter, be filed in the office of the Clerk of the Court for preservation as soon as the volume of Reports for the term, at which they are delivered, shall be published."

This Original General Rule 41 appeared with a few immaterial verbal alterations as Clause 3 of General Rule 25 of the Revision of December Term, 1858, 21 How. xiv.

Clause 3 of General Rule 25 of the Revision of May 1st, 1871, was in precisely the same language as Clause 2 of the present General Rule 25. For this Clause in the Revision of 1884, see 108 U. S. 588.

3. Opinions printed under the supervision of the justices delivering the same need not be copied by the clerk into a book of records; but at the end of each term the clerk shall cause such printed opinions to be bound in a substantial manner into one or more volumes, and when so bound they shall be deemed to have been recorded within the meaning of this rule.

HISTORY.

The third and last Clause (For the first two clauses see History under Clause 1, Rule 25) of Original General Rule 42, which appears to have been promulgated at January Term, 1835, 1 How. xxxv., but is not contained in 9 Pet. which contains opinions delivered at January Term, 1835, and where the Rule should naturally appear, and is not contained in any of Peters' Reports, is in these words:

“And all the opinions of the Court, [shall] as far as practicable, be recorded during the term, so that the publication of the reports may not be delayed thereby.”

With the exception of some immaterial verbal alterations this Clause of Original General Rule 42 appeared as Clause 2 of General Rule 25 of the Revisions of December Term, 1858, 21 How. xiv., and of May 1st, 1871. The present Clause 3 of General Rule 25 in its present form is new. For this Clause in the Revision of 1884, see 108 U. S. 588.

Rule 26.

CALL AND ORDER OF THE DOCKET.

1. The court, on the second day in each term, will commence calling the cases for argument in the order in which they stand on the docket, and proceed from day to day during the term in the same order; (except as hereinafter provided;) and if the parties, or either of them, shall be ready when the case is called, the same will be heard; and if neither party shall be ready to proceed in the argument, the case shall go down to the foot of the docket, unless some good and satisfactory reason to the contrary shall be shown to the court.

HISTORY.

This Clause is, with the exception of the words “(except as hereinafter provided;)” and with the exception of an immaterial verbal alteration, the same as the first sentence of an Original General Rule, promulgated in March, (January Term,) 1830, and given without number in 3 Pet. xvi., where the Rule with others is stated to have been omitted in 1 Wheat. and 1 Pet., because they were not regularly entered with the other Rules of the Court by the then Clerk of the Court at the time of their adoption. This Original General Rule is referred to as Rule 36 in an amendment thereto, (which, however, does not affect this Clause,) promulgated February 5th, 1840, 14 Pet. xi., and appears as Rule 36 in 1 How. xxxiii.

Subject to the same exceptions as above noted Clause 1 of the present

General Rule 26 appears as the first sentence of General Rule 26 of the Revision of December Term, 1858, 21 How. xv.

At December Term, 1866, 4 Wall. vii., a General Rule was promulgated numbered 2, the first Clause of which was as follows:

“That all cases on the calendar, except cases advanced as herein-after provided, shall be heard when reached in the regular call of the docket, and in the order in which they are entered.”

This General Rule contained three other Clauses, containing as their subject matter respectively, the subject matter of Clauses 3, 5 and 8 of the present General Rule 26. Clause 1 of General Rule 26 of the Revision of May 1st, 1871, is in substantially the same language as Clause 1 of the present General Rule 26. For this Clause in the Revision of 1884, see 108 U. S. 589.

AUTHORITIES.

1. A case which, in the regular order of business, was called, and, according to the Rules of the Supreme Court, placed at the foot of the calendar.

Barry v. Mercein, 4 How. 574. (January Term, 1846.)

[See same case under Clause 7, Rule 26.]

2. A motion to reinstate a cause dismissed under the 16th Rule denied. The appellant had been so unmindful of his interests, that he did not know the counsel, upon whom he relied for the presentation of his case, had died before the commencement of the then present Term, and had been unable to attend to business on account of impaired health for a long time before his death. On denying the motion, the Supreme Court stated that in the crowded state of their docket, filled with cases from all parts of the United States, it was their duty to take special care that the necessary delays in disposing of their business were not added to by the neglect of counsel or parties; and that for this reason, Rules requiring causes to be ready for hearing when reached are, and will continue to be rigidly enforced.

Hurley v. Jones, 97 U. S. 318. (October Term, 1877.)

[See same case under Clause 3, Rule 9, Rule 16, and Clause 9, Rule 26.]

3. A motion to reinstate a cause dismissed under Rule 16 denied. The Supreme Court stated that the application came directly within the Rule laid down in *Hurley v. Jones*, 97 U. S. 318 (Authority No. 2 under this Clause of Rule 26). The Supreme Court reiterated what they said in that case, namely: “that our Rules requiring causes to be ready for hearing when reached are, and will continue to be rigidly enforced.”

Alvord v. United States, 99 U. S. 593. (October Term, 1878.)

[See same case under Rule 16 and Clause 9, Rule 26.]

2. Ten cases only shall be considered as liable to be called on each day during the term, including the one under argument.

HISTORY.

This Clause originated with the second sentence of an Original General Rule given without number in 3 Pet. xvi., (where it is stated to have been omitted in 1 Wheat. and 1 Pet., which omission arose from the fact that it was not regularly entered with other Rules of Court, by the then Clerk of the Court at the time of their adoption,) and referred to as Rule 36 in an amendment thereto, which, however, does not affect this Clause, promulgated February 5th, 1840, 14 Pet. xi., and as Original General Rule 26 in 1 How. xxxiii., and promulgated March (January Term), 1830. The second sentence of said Original General Rule was as follows:

“That ten causes only shall be considered as liable to be called on each day during the term, including the one under argument, if the same shall not be concluded on the preceding day.”

This sentence appears in precisely the same words as the second sentence of General Rule 26 of the Revision of December Term, 1858, 21 How. xv. With an immaterial verbal alteration Clause 2 of the present General Rule 26 is the same as Clause 2 of General Rule 26 of the Revision of May 1st, 1871, the words “if the same shall not be concluded on the preceding day,” previously appearing, being, however, omitted. For this Clause in the Revision of 1884 see 108 U. S. 589.

3. Criminal cases may be advanced by leave of the court on motion of either party.

HISTORY.

This Clause first appeared in precisely the same language as the second Clause of a General Rule numbered 2, promulgated at December Term, 1866, 4 Wall. vii. It is also in precisely the same language as Clause 3 of General Rule 26 of the Revision of May 1st, 1871. For this Clause in the Revision of 1884, see 108 U. S. 589.

FEDERAL STATUTES.

“Sec. 709. A final judgment or decree in any suit in the highest court of a State, in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision is against their validity; or where is drawn in question the validity of a statute of, or an authority exercised under, any State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of their

validity; or where any title, right, privilege, or immunity is claimed under the Constitution, or any treaty or statute of, or commission held or authority exercised under, the United States, and the decision is against the title, right, privilege, or immunity specially set up or claimed, by either party, under such Constitution, treaty, statute, commission or authority, may be re-examined and reversed or affirmed in the Supreme Court upon a writ of error. The writ shall have the same effect as if the judgment or decree complained of had been rendered or passed in a court of the United States. The Supreme Court may reverse, modify, or affirm the judgment or decree of such State court, and may, at their discretion, award execution, or remand the same to the court from which it was removed by the writ."

Revised Statutes (Second Edition), § 709, p. 133, as amended by Act of Congress of 18th February, 1875, ch. 80, 18 Stat. at Large, 318; See also Act of Congress of 24th September, 1789, ch. 20, sec. 25, 1 Stat. at Large, 85; Act of Congress of 5th February, 1867, ch. 28, sec. 2, 14 Stat. at Large, 386.

"Sec. 710. Cases on writ of error, to revise the judgment of a State court in any criminal case, shall have precedence, on the docket of the Supreme Court, of all cases to which the Government of the United States is not a party, excepting only such cases as the court, in its discretion, may decide to be of public importance."

Revised Statutes (Second Edition), § 710, p. 134; Act of Congress of 13th July, 1866, ch. 184, sec. 69, 14 Stat. at Large, 172.

AUTHORITIES.

1. A motion to advance in criminal cases is discretionary, and was here refused as the defendant was not in jail. In this case, the Rule of Court under which the motion was made is referred to as Rule 30. This evidently refers to the second Clause of a General Rule numbered 2, promulgated at December Term, 1866, 4 Wall. vii., and referred to in the History of this Clause. No General Rule 30 appears in 21 How. or between it and 12 Wall.

Ward v. State of Maryland, 12 Wall. 163. (December Term, 1870.)

2. In a criminal case where the motion to advance was made on behalf of the United States, upon the representation of the Postmaster-General in substance that the questions in dispute would embarrass the operations of the Government while they remained unsettled, the Supreme Court accepted the statement as sufficient and granted the motion, because their Rule, as stated in the opinion, had but recently gone into operation; but the Court stated that thereafter, motions to advance, upon the ground

asked for in this case, must state the facts in such a manner that the Court might judge whether the Government would be embarrassed in the administration of its affairs by the delay; as in the then crowded state of the docket it was the duty of the Supreme Court to see that cases were not unnecessarily brought forward to the prejudice of others.

United States v. Norton, 91 U. S. 558. (October Term, 1875.)

[See same case under Clause 5, Rule 26.]

4. Cases once adjudicated by this court upon the merits, and again brought up by writ of error or appeal, may be advanced by leave of the court on motion of either party.

HISTORY.

This Clause is entirely new.

For this Clause in the Revision of 1884, see 108 U. S. 589.

AUTHORITIES.

See Authorities under Clause 5, Rule 24.

5. Revenue and other cases in which the United States are concerned, which also involve or affect some matter of general public interest, may also by leave of the court be advanced on motion of the attorney-general.

HISTORY.

This Clause originated in the third clause of an Original General Rule numbered 2, promulgated at December Term, 1866, 4 Wall. vii., and which appeared as Clause 4 of General Rule 26 of the Revision of May 1st, 1871. These prior Rules differed from Clause 5 of the present General Rule 26 in that they began as follows, viz.: "Revenue cases and cases in which the United States," being otherwise the same as Clause 1 of the present General Rule 26. For this Clause in the Revision of 1884, see 108 U. S. 589.

AUTHORITIES.

1. No case can be taken up out of order on the docket where private interests only are concerned. This Rule is departed from when the question in dispute will embarrass the operations of the Government while it remains unsettled.

United States v. Fossatt, 21 How. 445. (December Term, 1858.)

[See same case under Clause 5, Rule 24.]

2. A motion on behalf of the United States to advance a criminal case on the ground that the questions in dispute would embarrass the Government while they remained unsettled was denied. For the grounds of the decision, see same case under Clause 3, Rule 26.

United States v. Norton, 91 U. S. 558. (October Term, 1875.)

[See same case under Clause 3, Rule 26.]

3. A case where the Supreme Court stated that until the enactment of an Act of Congress approved June 30th, 1870 (16 Stat. at Large, 176) which act gave priority to certain cases to which a State was a party in the courts of the United States, and is re-enacted in Section 949 of the Revised Statutes of the United States (Second Edition), p. 180 (See this section under Clause 7, Rule 26), the order of hearing cases in the Supreme Court was regulated almost entirely by Rules, and that prior to that Act they had held that the only cases of general public interest which should be taken up out of their regular order, were those in which the question in dispute would embarrass the operations of the Government while it remained unsettled, citing *United States v. Fossatt*, 21 How. 445, (Authority No. 1 under this Clause of Rule 26.)

Hoge v. Richmond, etc. R. R. Co., 93 U. S. 1. (October Term, 1876.)

[See same case under Clause 7, Rule 26.]

6. All motions to advance cases must be printed, and must contain a brief statement of the matter involved, with the reasons for the application.

HISTORY.

This Clause is in precisely the same language as an amendment to General Rule 26 promulgated May 3d, 1875, 21 Wall. v. This amendment added the words of this Clause at the end of Clause 4 of General Rule 26, as promulgated at the Revision of May 1st, 1871. See Clause 5 of General Rule 26, and the History thereunder. For this Clause in the Revision of 1884, see 108 U. S. 589.

7. No other case will be taken up out of the order on the docket, or be set down for any particular day, except under special and peculiar circumstances to be shown to the court. Every case which shall have been called in its order and passed and put at the foot of the docket shall, if not again reached during the term it was called, be continued to the next term of the court.

HISTORY.

This Clause originated in the third and fourth sentences of an Original General Rule promulgated March (January Term), 1830, and given without number, in 3 Pet. xvii., and stated to have been omitted with other Rules in 1 Wheat. and 1 Pet. because they were not regularly entered with the other Rules of the Court by the then Clerk of the Court, at the time of their adoption. These sentences were as follows:

“No cause shall be taken up out of its order on the docket, or be set down for any particular day; except under special and peculiar circumstances, to be shown to the Court. Every cause which shall have been twice called, in its order, and passed, and put at the foot of the docket, shall, if not again reached during the term it was last called, be dismissed, and no longer continued on the docket.”

The fourth and last sentence of this Original General Rule was amended February 5th, 1840, the Rule being in the amendment spoken of as Rule 36, 14 Pet. xi., so as to read as follows:

“Every cause which shall have been twice called in its order, and passed, and put at the foot of the Docket; shall, if not again reached during the term it is called, *be continued to the next Term of the Court.*”

These two sentences as amended appear as the third and fourth sentences of Original General Rule 36, in 1 How. xxxiii. They also appear as amended, in substantially the same language, as the third and fourth sentences of General Rule 26 of the Revision of December Term, 1858, 21 How. xv., the principal change being the omission in said Revision of the word “twice” as contained in the fourth (last) sentence of Original General Rule 36 as amended.

The first Clause of a General Rule numbered 2, promulgated at December Term, 1866, 4 Wall. vii., was as follows:

“That all cases on the calendar, except cases advanced as herein-after provided, shall be heard when reached in the regular call of the docket, and in the order in which they are entered.”

The cases therein referred to as “advanced as hereinafter provided” are the cases referred to under Clauses 3, 5 and 8 of the present General Rule 26 in the History of each thereof respectively.

With the exception of some immaterial verbal alterations Clause 7 of the present General Rule 26 is the same as Clause 5 of General Rule 26 of the Revision of May 1st, 1871. For this Clause in the Revision of 1884, see 108 U. S. 589.

FEDERAL STATUTES.

See 709 Revised Statutes (Second Edition), p. 133, as amended by Act of Congress of 18th February, 1875, ch. 80, 18 Stat. at Large, 318, quoted under Clause 3, Rule 26, and the Acts of Congress cited thereunder.

“Sec. 949. When a State is a party, or the execution of the revenue

laws of a State is enjoined or stayed, in any suit in a court of the United States, such State or the party claiming under the revenue laws of a State, the execution whereof is enjoined or stayed, shall be entitled, on showing sufficient reason, to have the cause heard at any time after it is docketed, in preference to any civil cause pending in such court between private parties."

Revised Statutes (Second Edition), § 949, p. 180; Act of Congress of 30th June, 1870, ch. 181, 16 Stat. at Large, 176.

AUTHORITIES.

ESPECIALLY APPLICABLE TO THIS CLAUSE.

1. Where a case in relation to a writ of Habeas Corpus had been called at a prior day during the Term, and, neither party appearing, it was placed at the foot of the calendar; and where application was made to advance it on a petition showing the nature of the case, and certain peculiar circumstances, as that the plaintiff in error was a British subject residing in England, had come to the United States to attend the Supreme Court at the previous Term, but was obliged to return home as the case was not reached, had again come to the United States to attend the Court, but did not arrive owing to an unusually long passage, until after the Court had met, and was then detained in New York by illness, and upon writing to the Clerk of the Court, found that the day before the letter was received by the Clerk the case was placed at the foot of the calendar, and where it was evident that from the number of cases standing before it, it could not be reached during the present Term unless it was given priority, the Supreme Court while indicating their disposition to bring the case to a speedy hearing, stated that at present the assignment of a particular day for the trial involved other and higher considerations than that of a mere departure from established Rules, as the Court would soon adjourn, and several important cases, some of which could not be continued without producing much public inconvenience in several States, had already been specially assigned, and the order in which they were to be taken up announced from the bench. The Court therefore declined, under the circumstances, to make a new and unexpected arrangement in the order of business by which another case, not entitled to priority, is interposed out of its proper order.

Barry v. Mercein, 4 How. 574. (January Term, 1846.)

[See same case under Clause 1, Rule 26.]

2. Cases regularly on the calendar of the Supreme Court, whether brought there by writ of error or appeal, if within the jurisdiction of the Court, are required to be heard when reached in the regular call of the docket, and they cannot be heard before they are reached, except when they are advanced by the order of the Court. When a case is within the jurisdiction of the Court, and there has been no defect in removing it

from the subordinate Court, the Supreme Court will not dismiss the case on motion made out of the regular call of the docket.

"*The Eutaw*," 12 Wall. 136. (December Term, 1870.)

3. The Supreme Court cannot advance a cause for argument for reason that they may think it has no merits, for further argument may show the contrary.

Amory v. Amory, 91 U. S. 356. (October Term, 1875.)

4. *Hoge v. Richmond, etc., R. R. Co.*, 93 U. S. 1. (October Term, 1876.)

[For the substance of the decision in this case, see same case under Clause 5, Rule 26.]

5. Where both the appellants and appellees ask leave to have a cause advanced for a hearing, but only private interests are involved, the Supreme Court sees no reason why it should have preference over other suits on the docket.

Sage v. Central R. R. Co., 93 U. S. 412 (419). (October Term, 1876.)

6. A case where, the Supreme Court at the previous Term having decided that it did not present questions which entitled it to a hearing in advance of others standing before it on the docket, application was made at the next Term to advance the case and hear it with another which had precedence on the docket. The defendant in error objected. The Court denied the motion, stating that "when a case is advanced to be heard with another which has precedence on the docket, the Rule is to require the two to be argued as one," which is never departed from except under very peculiar circumstances; that the Supreme Court could not compel a party against his will to argue his case with another, and therefore they had always denied motions of that kind when resisted, and that there were no such special circumstances in this case as made it proper to be advanced and heard separately from the other.

Louisiana v. New Orleans, 103 U. S. 521. (October Term, 1880.)

[See same case under Clause 8, Rule 26.]

7. Although the questions involved may be of great public importance, that does not necessarily entitle the parties to a hearing in preference to others. Practically every case advanced postpones another that has been on the docket three years awaiting its turn in the regular call. Under these circumstances the Supreme Court deem it their duty not to take up a case out of its order, except for imperative reasons.

Poindexter, White & Carter v. Greenhow, 109 U. S. 63 (64). (October Term, 1883.)

[See same case below under this Clause.]

UNDER SECTION 949 OF THE REVISED STATUTES OF THE UNITED STATES.

8. A case where both parties moved to advance a cause on the ground,

under the Act of Congress of June 30th, 1870, 16 Stat. at Large, 176, that it was a case where a State was a party. The Supreme Court denied the motion, stating that such motions are not granted as of course, even when both parties concur, as such an order, if improperly made, would prejudice the rights of other parties on the 'calendar, and that, in view of that consideration, it became necessary to determine whether the case was one where the parties, or either of them, were entitled to such preference. The Supreme Court *held* that although the State was nominally a party, the proceedings being in the nature of a *quo warranto*, the relators were the real plaintiffs in interest, and not the State.

Miller v. The State, 12 Wall. 159 (161). (December Term, 1870.)

9. The Supreme Court denied a motion to advance, under the Act of June 30th, 1870, 16 Stat. at Large, 176, on the ground that the ordinances of municipal corporations levying taxes, cannot be classed as revenue laws of a State, but Congress seemed to have intended to give to the State the right to preference in hearing, when itself a party to a cause pending in the Supreme Court, and a like preference, when the execution of the revenue laws of a State is enjoined or suspended, to any party claiming under such laws; that this preference is given plainly enough, because of the presumed importance of such cases to the administration and internal welfare of the States, and because of their dignity as equal members of the Union, but that the reasons for preference do not apply to municipal corporations, more than to railroad and many other corporations, and that nothing is shown which requires the advancement of the cause on account of special and peculiar circumstances.

Davenport City v. Dows, 15 Wall. 390 (392). (December Term, 1872.)

10. In a suit where the motion to advance was made under an Act of Congress approved June 30th, 1870, entitled "An Act giving priority to certain cases to which a State is a party in the Courts of the United States," 16 Stat. at Large, 176, and under Section 949 of the Revised Statutes of the United States which embodies the provisions of said Act, the Supreme Court denied the motion to advance the cause under section 949 of the Revised Statutes of the United States, on the ground that the Statute is not imperative and does not provide that all cases in which the execution of the revenue laws of a State is enjoined or stayed, shall have preference over others upon the docket, but only such as, upon a showing, the Court is of the opinion should be heard out of their order, and the Court must determine what is "sufficient reason" for this preference under all the circumstances of the case; that in the present crowded condition of the docket the Court must take care that injustice is not done to "private parties" by unnecessarily advancing causes affecting public interests, and to that end they *held* that they would not give preference to cases in which the execution of the revenue laws of a State was enjoined, unless it sufficiently appeared that the operations of the government of the State

would be embarrassed by delay. *Held*, in this case, that a proper showing to this effect had not been made.

In its opinion the Court refers to the Illinois Railroad Tax Cases (State Railroad Tax Cases), 92 U. S. 575, as having been heard out of their order at the previous Term, and stated that in these cases questions of great public interest were involved, and that the operations of the government of the State would be embarrassed so long as they remained undetermined in the Supreme Court, and that sufficient reason being shown, the cases were advanced.

Hoge v. Richmond, etc., R. R. Co., 93 U. S. 1. (October Term, 1876.)

[See same case under Clause 5, Rule 26.]

11. A motion to advance a suit against a Tax Collector was denied on the ground that neither of the parties was entitled to a hearing in preference to others, under the provisions of Section 949 of the Revised Statutes, as the State of Virginia was not a party to either of the suits, and the execution of the revenue laws had not been enjoined or stayed; that this Clause related only to revenue cases; that Clause 4 of General Rule 26 then in force related only to revenue cases and cases in which the United States were concerned, which also involved or affected some matter of general public interest; but that even such cases could not be advanced except in the discretion of the Court, and on the motion of the Attorney-General.

Poindexter, White & Carter v. Greenhow, 109 U. S. 63 (64). (October Term, 1883.)

[See same case above under this Clause.]

8. Two or more cases, involving the same question, may, by the leave of the court, be heard together; but they must be argued as one case.

HISTORY.

With the exception of the omission of the word "also" before the word "involving" in this Clause, it is precisely the same as the fourth Clause of a General Rule numbered 2, promulgated at December Term, 1866, 4 Wall. vii., and as Clause 6 of General Rule 26, of the Revision of May 1, 1871. For this Clause in the Revision of 1884, see 108 U. S. 589.

AUTHORITIES.

1. Where of two cases before the Supreme Court one, and the principal case was not before the Court in such a form as would enable the Court to hear it at the then term, the Court ordered the second case to be continued to the next term, to be argued when the whole subject was

ready for hearing. All the questions which were involved in both cases grew out of the same transaction, and depended upon the same facts, and it was impossible to decide one without disposing of the principal question in the other. The Court held that it would not be proper, where questions of so much interest were concerned, to hear a portion of them at one term and a portion at another. Both cases were ordered to be argued together.

The United States v. Booth; Ableman v. Booth, 18 How. 476 and 479. (December Term, 1855.)

2. When a case is advanced to be heard with another which has precedence on the docket, the Rule is to require the two to be argued as one, and this Rule is never departed from, except under very peculiar circumstances. As the Supreme Court cannot compel a party against his will to argue his case with another, they have always, heretofore, denied motions of that kind when they are resisted, as was done in this case. The motion to advance was overruled.

Louisiana v. New Orleans, 103 U. S. 521. (October Term, 1880.)

[See same case under Clause 7, Rule 26.]

9. If, after a case has been passed under circumstances which do not place it at the foot of the docket, the parties shall desire to have it heard, they may file with the clerk their joint request to that effect, and the case shall then be by him reinstated for call, ten cases after that under argument, or next to be called at the end of the day the request is filed. If the parties will not unite in such a request, either may move to take up the case, and it shall then be assigned to such place upon the docket as the court may direct.

HISTORY.

This Clause, with the exception of some immaterial verbal alterations, is the same as the first Clause of an amendment to General Rule 26, as contained in the Revision of May 1st, 1871, promulgated January 18th, 1875, 20 Wall. xvi., which has been considered as being the first two sentences of Clause 7 of said General Rule 26 after such Revision. For this Clause in the Revision of 1884, see 108 U. S. 589.

AUTHORITIES.

BEFORE THE AMENDMENT OF 1875.

1. A motion to reinstate a cause is addressed to the discretion of the Su-

preme Court. Such a motion was denied in a case previously dismissed by written consent of counsel for both parties on April 20th, of one term, the Court continuing to sit till April 30th of the same term, the long vacation then intervening, the mandate having been sent down in May, and the motion not having been filed till November 7th, it appearing that the party moving was aware of the dismissal shortly after the order was made, and it being stated that counsel for the moving party acted without his knowledge or consent, and nothing being produced from the counsel who made the motion to dismiss. *Held*, that the silence of the party after the facts came to his knowledge must be held to amount to acquiescence and ratification, and the motion was denied, although the Attorney-General, who represented the other side, consented that the order of dismissal should be rescinded.*

Deming's Appeal, 10 Wall. 251 (255). (December Term, 1869.)

2. See *Hurley v. Jones*, 97 U. S. 318. (October Term, 1877.)

[Under Clause 3, Rule 9, Rule 16, and Clause 1, Rule 26.]

3. See *Alvord v. United States*, 99 U. S. 593. (October Term, 1878.)

[Under Rule 16, and Clause 1, Rule 26.]

4. A motion was made to use the printed record without paying the Clerk's fee for printing. The record was printed, but the Clerk did not furnish the necessary copies to the justices, because his fee for preparing the record for the printer and other services had not been paid by the appellant, though demanded. The Supreme Court *held* that while under Rule 10, if through the fault of a plaintiff in error or appellant, printed copies of the record are not furnished to the justices or the parties when required in the due prosecution of the cause, the writ on appeal will be dismissed for want of prosecution, unless sufficient cause be shown to the contrary, yet as this was the first time the question had arisen, and the practice had not theretofore been authoritatively announced, it was ordered, that, unless the appellant pay to the Clerk within twenty days from the entry of the opinion or order what was due him for this fee, the appeal be dismissed for want of prosecution; that if the payment be made the Clerk should at once notify the opposite party, and the cause might thereafter be brought on for hearing under paragraph 7 (present Clause 9), of Rule 26, as a case that had been passed under circumstances which did not place it at the foot of the docket.

Steever v. Rickman, 109 U. S. 74. (October 23d, 1883.)

[See same case under Clause 2, Rule 10.]

10. No stipulation to pass a case without placing it at the foot of the docket will be recognized as binding upon the court. A case can only be so passed upon application made and leave granted in open court.

HISTORY.

This Clause, with the exception of an immaterial verbal alteration, is the same as the second Clause of an amendment to General Rule 26, as contained in the Revision of May 1st, 1871, promulgated January 18th, 1875, 20 Wall. xvii., which has been considered as being the third and fourth sentences of Clause 7 of said General Rule 26 after such Revision. For this Clause in the Revision of 1884, see 108 U. S. 590.

Rule 27.

ADJOURNMENT.

The court will, at every term, announce on what day it will adjourn at least ten days before the time which shall be fixed upon; and the court will take up no case for argument, nor receive any case upon printed briefs, within three days next before the day fixed upon for adjournment.

HISTORY.

With the exception of some immaterial changes, this General Rule is the same as Original General Rule 52, promulgated at January Term, 1838, 12 Pet. viii., given as Rule 47 in 1 How. xxxvii., and as General Rule 28 of the Revision of December Term, 1858, 21 How. xv., and as General Rule 27 of the Revision of May 1st, 1871. For this Rule in the Revision of 1884, see 108 U. S. 590.

FEDERAL STATUTES.

RELATING TO THE SESSIONS OF THE SUPREME COURT.

"Sec. 684. The Supreme Court shall hold, at the seat of Government, one term annually, commencing on the second Monday in October, and such adjourned or special terms as it may find necessary for the despatch of business; and suits, proceedings, recognizances, and processes pending in or returnable to said court shall be tried, heard, and proceeded with as if the time of holding said sessions had not been hereby altered."

Revised Statutes (Second Edition), § 684, p. 126; Act of Congress of 29th April, 1802, ch. 31, sec. 1, 2 Stat. at Large, 156; Act of Congress of 23d July, 1866, ch. 210, sec. 1, 14 Stat. at Large, 209; Act of Congress of 24th January, 1873, ch. 64, 17 Stat. at Large, 419.

"Sec. 685. If, at any session of the Supreme Court, a quorum does not attend on the day appointed for holding it, the justices who do attend may adjourn the court from day to day for twenty days after said appointed time, unless there be sooner a quorum. If a quorum does not attend within said twenty days, the business of the court shall be continued over till the next appointed session; and if, during a term, after a quorum has assembled, less than that number attend on any day, the justices attending may adjourn the court from day to day until there is a quorum, or may adjourn without day."

Revised Statutes (Second Edition), § 685, p. 126; Act of Congress of 29th April, 1802, ch. 31, sec. 1, 2 Stat. at Large, 156; Act of Congress of 21st January, 1829, ch. 12, §§ 1, 2, 4 Stat. at Large, 332; Act of Congress of 23d July, 1866, ch. 210, sec. 1, 14 Stat. at Large, 209.

"Sec. 686. The justices attending at any term when less than a quorum is present, may, within the twenty days mentioned in the preceding section, make all necessary orders touching any suit, proceeding or process, depending in or returned to the court, preparatory to the hearing, trial, or decision thereof."

Revised Statutes (Second Edition), § 686, p. 127; Act of Congress of 29th April, 1802, ch. 31, sec. 1, 2 Stat. at Large, 156; Act of Congress of 21st January, 1829, ch. 12, sec. 1, 4 Stat. at Large, 332.

Rule 28.

DISMISSING CASES IN VACATION.

Whenever the plaintiff and defendant in a writ of error pending in this court, or the appellant and appellee in an appeal, shall in vacation, by their attorneys of record, sign and file with the clerk an agreement in writing directing the case to be dismissed, and specifying the terms on which it is to be dismissed as to costs, and shall pay to the clerk any fees that may be due to him, it shall be the duty of the clerk to enter the case dismissed, and to give to either party requesting it a copy of the agreement filed; but no mandate or other process shall issue without an order of the court.

HISTORY.

With the exception of some immaterial changes in its language, this General Rule is substantially the same as Original General Rule 64, promulgated at December Term, 1857, 20 How. iv., and as General Rule 29 of the Revision of December Term, 1858, 21 How. xvi., and as General

Rule 28 of the Revision of May 1st, 1871. For this Rule in the Revision of 1884, see 108 U. S. 590.

[For table of Clerk's fees, see Clause 7, Rule 24.]

AUTHORITIES.

1. This case came to the Supreme Court on appeal as the *United States*, appellant, and *J. J. Estudillo*, appellee. On behalf of the United States and the appellee, an agreement under the then General Rule 29, was signed at the last vacation that the appeal should be dismissed, and the cause was dismissed by the clerk accordingly. Thereafter, an application was made by Thomas W. Mulford and others to vacate the stipulation; "which stipulation," the motion ran, "was made without their consent, or the consent of their attorney, or the consent of the District Attorney of the United States for the Northern District of California," &c. The motion was denied, it having been made by parties whose names did not actually appear in the record as having an interest in the case, although it was obvious that below there were some private owners contesting the case under cover of the Government name, and that such were there represented by the same counsel who represented them on the motion.

United States v. Estudillo, 1 Wall. 710. (December Term, 1863.)

Rule 29.

SUPERSEDEAS.

Supersedeas bonds in the circuit courts must be taken, with good and sufficient security, that the plaintiff in error or appellant shall prosecute his writ or appeal to effect, and answer all damages and costs if he fail to make his plea good. Such indemnity, where the judgment or decree is for the recovery of money not otherwise secured, must be for the whole amount of the judgment or decree, including just damages for delay, and costs and interest on the appeal; but in all suits where the property in controversy necessarily follows the event of the suit, as in real actions, replevin, and in suits on mortgages, or where the property is in the custody of the marshal under admiralty process, as in case of capture or seizure, or where the proceeds thereof, or a bond for the value thereof, is in the custody or control of the court, indemnity in all such cases is only required in an amount sufficient to secure the sum recovered for the use and detention of the property, and the costs of the suit, and just damages for delay, and costs and interest on the appeal.

HISTORY.

This Rule is in precisely the same language as General Rule 32, promulgated at December Term, 1867, 6 Wall. v., and as general Rule 29 of the Revision of May 1st, 1871. For this Rule in the Revision of 1884, see 108 U. S. 590.

FEDERAL STATUTES.

“Sec. 1000. Every justice or judge signing a citation on any writ of error, shall, except in cases brought up by the United States or by direction of any Department of the Government, take good and sufficient security that the plaintiff in error or the appellant shall prosecute his writ or appeal to effect, and, if he fail to make his plea good, shall answer all damages and costs, where the writ is a *supersedeas*, and stays execution, or all costs only where it is not a *supersedeas* as aforesaid.”

Revised Statutes (Second Edition), § 1000, p. 187; Act of Congress of 24th September, 1789, ch. 20, sec. 22, 1 Stat. at Large, 84; Act of Congress of 12th December, 1794, ch. 3, 1 Stat. at Large, 404; Act of Congress 21st February, 1863, ch. 50, 12 Stat. at Large, 657; Act of Congress of 27th July, 1868, ch. 255, sec. 1, 15 Stat. at Large, 226.

“Sec. 1001. Whenever a writ of error, appeal, or other process in law, admiralty, or equity, issues from or is brought up to the Supreme Court, or a circuit court, either by the United States or by direction of any Department of the Government, no bond, obligation, or security shall be required from the United States, or from any party acting under the direction aforesaid, either to prosecute said suit, or to answer in damages or costs. In case of an adverse decision, such costs as by law are taxable against the United States, or against the party acting by direction as aforesaid, shall be paid out of the contingent fund of the Department under whose directions the proceedings were instituted.”

Revised Statutes (Second Edition), § 1001, p. 187; Act of Congress of 21st February, 1863, ch. 50, 12 Stat. at Large, 657; Act of Congress of 27th July, 1868, ch. 255, sec. 1, 15 Stat. at Large, 226.

“Sec. 1002. Writs of error shall be prosecuted from the final judgments of district courts acting as circuit courts to the Supreme Court in the same manner as from the final judgments of circuit courts.”

Revised Statutes (Second Edition), § 1002, p. 187. See Acts of Congress there cited.

“Sec. 1003. Writs of error from the Supreme Court to a State court in cases authorized by law, shall be issued in the same manner, and under the same regulations, and shall have the same effect as if the

judgment or decree complained of had been rendered or passed in a court of the United States."

Revised Statutes (Second Edition), § 1003, p. 187; Act of Congress of 24th September, 1789, ch. 20, sec. 25, 1 Stat. at Large, 85-86; Act of Congress of 5th February, 1867, ch. 28, sec. 2, 14 Stat. at Large, 386.

"Sec. 1007. In any case where a writ of error may be a *supersedeas*, the defendant may obtain such *supersedeas* by serving the writ or [of] error, by lodging a copy thereof for the adverse party in the clerk's office where the record remains, within sixty days, Sundays exclusive, after the rendering of the judgment complained of, and giving the security required by law on the issuing of the citation. But if he desires to stay process on the judgment, he may, having served his writ of error as aforesaid, give the security required by law within sixty days after the rendition of such judgment, or afterward with the permission of a justice or judge of the appellate court. And in such cases where a writ of error may be a *supersedeas*, executions shall not issue until the expiration of ten days."

Revised Statutes (Second Edition), § 1007, p. 188; Act of Congress of 24th September, 1789, ch. 20, sec. 23, 1 Stat. at Large, 85; Act of Congress, of 1st June, 1872, ch. 255, sec. 11, 17 Stat. at Large, 198; Act of Congress of 18th February, 1875, ch. 80, 18 Stat. at Large, 318, amending the foregoing Section.

"Sec. 1012. Appeals from the circuit courts and district courts acting as circuit courts, and from district courts in prize causes, shall be subject to the same rules, regulations, and restrictions as are or may be prescribed in law in cases of writs of error."

Revised Statutes (Second Edition), § 1012, p. 189; Act of Congress of 3d March, 1803, ch. 40, sec. 2, 2 Stat. at Large, 244; Act of Congress of 30th June, 1864, ch. 174, sec. 13, 13 Stat. at Large, 310.

AUTHORITIES.

PRIOR TO THE ADOPTION OF GENERAL RULE 32 IN 1867.

1. On an objection that it did not appear that the judge who granted the writ of error did, upon issuing the citation, take the bond required by Section 22 of the Judiciary Act, the Supreme Court said that they considered that provision as merely directory to the judge, and that an omission did not avoid the writ of error, and that if any party be prejudiced by the omission, the Supreme Court could grant him summary relief, by imposing such terms on the other party as, under all the circumstances, might be legal and proper, and that the presumption of law was, that, until the contrary appears, every judge who signs a citation has obeyed the injunctions of the act.

Martin v. Hunter's Lessee, 1 Wheat. 304 (361). (February Term, 1816.)

2. Under the Judiciary Act of 1789, chap. 20, sec. 22, the security to be taken from the plaintiff in error by the judge signing the citation on a writ of error, must be sufficient to secure the whole amount of the judgment, and is not to be confined to such damages as the Appellate Court might adjudge for delay. Ordered that the cause stand dismissed unless the plaintiff in error should give a bond with good and sufficient security in due form of law, within thirty days, to prosecute his writ with effect, and to answer all damages and costs if he fail to make his plea good, the amount of such security to be sufficient to secure the whole judgment in case the same shall be affirmed, and be not otherwise discharged.

Catlett v. Brodie, 9 Wheat. 553. (February Term, 1824.)

3. An admiralty appeal where the Supreme Court said it was true that the security required by law was not given until after the lapse of the five years, and that under such circumstances, the court might have disallowed the appeal, and refused the security, but that, as the court accepted it, it must be considered as a sufficient compliance with the order of the court, and that it had relation back to the time of the allowance of the appeal; that the mode of taking the security, and the time for perfecting it, were matters of discretion, to be regulated by the court granting the appeal, and that when its order was complied with, the whole had relation back to the time the appeal was prayed.

"*The Dos Hermanos*," 10 Wheat. 306 (311). (February Term, 1825.)

4. Objection was taken at the argument to the regularity of the appeal, it having been prayed by all the defendants against whom the decree was made, and the appeal bond having been given by one defendant only. The Supreme Court held that the objection, if it had been material in the cause, ought to have been taken by way of a preliminary motion to dismiss the appeal for irregularity, on account of the failure to give the proper appeal bond; but that the question was not material in the case under the circumstances.

Mandeville v. Riggs, 2 Pet. 482 (490). (January Term, 1829.)

5. An appeal dismissed because the transcript showed that no appeal bond was taken or approved by the judge who signed the citation in the case.

Boyce v. Grundy, 6 Pet. 777. (January Term, 1832.)

6. A case where a writ of error, bond, and citation having been given in due season according to law, operated as a stay of execution, and accordingly the Supreme Court granted a motion for a *supersedeas* as the issuing of execution by the court below was wholly irregular.

Stockton v. Bishop, 2 How. 74. (January Term, 1844.)

7. It is not necessary that all the defendants should join in the appeal bond, though all must join in the appeal. It is sufficient if the appeal

bond is approved by the court as satisfactory and complete security by whomsoever it might be executed.

Brockett v. Brockett, 2 How. 238 (240). (January Term, 1844.)

8. The Supreme Court *holds* that where an appeal is intended to operate as a *supersedeas*, the security given in the appeal bond must be equal to the amount of the decree, as it is in the case of a judgment at common law.

Stafford v. The Union Bank of Louisiana, 16 How. 135. (December Term, 1853).

9. Where the appeal was prayed on the same day that the decree was entered, but the bond was not given until nearly a year afterwards, the Supreme Court held that an appeal must be perfected within ten days after a decree is entered, to operate as a *supersedeas*; and a motion for a *supersedeas* was accordingly denied.

Adams v. Law, 16 How. 144 (148). (January Term, 1853.)

Stafford v. Union Bank of Louisiana, 17 How. 275. (December Term, 1854.)

10. An appeal bond may be approved by a judge out of court.

Hudgins v. Kemp, 18 How. 530. (December Term, 1855.)

11. In an action of ejectment, the plaintiff in error, on the allowance of the writ of error, gave security in the sum of \$1,000, conditioned that he would prosecute his writ to effect, and answer all damages and costs if he failed to make his plea good. The defendant in error declared that the bond for \$1,000 was not sufficient to answer all the damages and costs if the plaintiff in error should fail to prosecute his writ to effect, and moved for an order requiring the plaintiff in error to give additional security in the sum of \$25,000, or such other sum as the Supreme Court might deem sufficient to cover all damages which the defendant in error might suffer, if the writ of error should not be prosecuted with effect. The Supreme Court could find no precedent for the motion and denied it, the motion being for the purpose of covering apprehended damages which the plaintiff below thought he might sustain by being kept out of his land.

Roberts v. Cooper, 19 How. 373. (December Term, 1856.)

12. Time was allowed within which to give a bond for costs to prevent a dismissal of an appeal where no appeal bond was given either as security for costs or *supersedeas* of execution at the time of granting the appeal.

Anson v. Blue Ridge R.R. Co., 23 How. 1. (December Term, 1859.)

13. On an appeal from a decree of foreclosure, the condition of the appeal bond was that "he shall diligently prosecute said appeal, and shall pay all costs and damages that may be awarded against him." The Supreme Court *held* that the appeal from the decree of the court below directing a sale of the mortgaged premises did not operate to stay the proceedings, as the bond given was simply a bond for costs.

Orchard v. Hughes, 1 Wall. 73 (76). (December Term, 1863.)

14. In a case where an appeal was taken from that part of the case covered by the final decree, and a certificate of division upon the residue, and where no appeal bond was given, the Supreme Court stated that the omission to file the bond, under the circumstances, might be corrected by filing a bond in conformity with the Act of Congress, as the peculiar state of the record and mode of bringing up the questions from the court below probably misled the solicitors. The appellant was given time to file a bond with the Clerk of the Court, to be approved by the proper officer, and upon complying with which, the motion to dismiss the appeal for want of the bond be dismissed, otherwise granted.

Brobst v. Brobst, 2 Wall. 96. (December Term, 1864.)

15. A case wherein the Supreme Court states, referring to sec. 22 of the Judiciary Act, that when a defendant sues out a writ of error and desires that it may operate as a *supersedeas*, he is required to do two things, and if either is omitted, he fails to accomplish his object: 1, He must serve the writ of error as aforesaid, within ten days, "Sundays exclusive," after the rendition of the judgment; and 2, He must give bond with sureties to the satisfaction of the Court, for the benefit of the plaintiff, in a sum sufficient to secure the whole judgment in case it be affirmed. Security for costs only is required of the defendant when the writ of error sued out by him does not stay the execution, and he is not compelled, in any case, to make the writ of error a *supersedeas*, although it may be sued out within ten days after the judgment.

United States v. Dashiell, 3 Wall. 688 (701). (December Term, 1865.)

16. A case where the Supreme Court stated that it was urged that the appeal bond was not approved by the judge. The Court, however, *held* that it was a fair inference, from the acts of the judge, in signing the citation, and in witnessing the appeal bond, that he approved of the security; that the Judiciary Act did not, in terms, require that the judge shall put his approval of the bond in writing, nor can a writ of error be treated as a nullity because sufficient security is not given, and the Supreme Court will take care, on application, that the rights of the defendant in error be not prejudiced by the omission, but will not dismiss the writ, except on failure to comply with such terms as it might impose. The motion to dismiss was denied.

Davidson v. Lanier, 4 Wall. 447 (453). (December Term, 1866.)

17. Where the District Judge refused to approve a *supersedeas* bond, on the ground that all the sureties were non-residents of the district, the Supreme Court, although not agreeing with the opinion of the District Judge that the fact that the non-residence of the sureties within the district was a sufficient reason for rejecting a bond, if it were in all other respects unobjectionable, declined to interfere by *mandamus*, but *held* that the case being properly in the Supreme Court by appeal, the Court might order that upon the filing of a bond in the sum of \$50,000, with the usual

conditions, at any time within thirty days, which should be approved by the Clerk of the Supreme Court, a *supersedeas* would issue, commanding a stay of proceedings on said decree until the further order of the Court.

Ex parte The Milwaukee Railroad Co., 5 Wall. 188. (December Term, 1866.)

18. A motion to dismiss an appeal because a bond for the prosecution of the appeal was not filed within ten days after the decree, denied. The decree was placed in the hands of the clerk, November 15th, 1866. It was retained by the Judge for several days; was entered by the clerk on the 20th, as of the 15th. The bond was filed on the 28th. The Supreme Court *held* that for the purposes of the appeal the decree must be regarded as having been passed on the 20th, and that the bond was filed in time; but that if this were otherwise, and through mistake or accident no bond, or a defective bond, had been filed, the Supreme Court would not dismiss the appeal, except on failure to comply with an order to give proper security within such reasonable time as it might prescribe. Security for prosecution should be taken by the judge on signing the citation; but if this duty be omitted, or defectively performed, a remedy can be applied by the Supreme Court on motion. The bond filed was sufficient both for costs and to operate as a *supersedeas*.

Seymour v. Freer, 5 Wall. 822. (December Term, 1866.)

19. When an appeal has been taken, and a *supersedeas* bond given in time, and approved below, it is a matter of discretion with the Supreme Court to increase or diminish the amount of the bond, and to require additional sureties or otherwise as justice may require. Leave was given appellants to withdraw the appeal bond on file, on filing one in smaller amount with good and sufficient sureties to the satisfaction of the Clerk of the Supreme Court.

Rubber Co. v. Goodyear, 6 Wall. 153. (December Term, 1867.)

20. A motion was made to dismiss a writ of error on the ground that the bond for prosecution was not taken as required by law. The motion was denied, the Supreme Court stating that the law requires that the judge signing the citation shall take good and sufficient security; that this, doubtless, is equivalent to a provision that the judge shall approve the bond, but that no particular form of approval was required, that approval might be inferred from the facts of the transaction, and the Court thought it a fair, and almost necessary inference, from the fact of the sureties being sworn to their sufficiency by the judge who signed the citation, that the security was taken by him as required by law.

Silver v. Ladd, 6 Wall. 440. (December Term, 1867.)

SUBSEQUENT TO THE ADOPTION OF GENERAL RULE 32 IN 1867.

21. A bond is not essential to a valid appeal. It can be given in the

Supreme Court, and cases have been brought to the Supreme Court where no bond was approved by the court below; and the Court has permitted the appellant to give bond in the Supreme Court. Citing *Ex parte Milwaukee Railroad Co.*, 5 Wall. 188; *Seymour v. Freer*, 5 Wall. 822; "*The Dos Hermanos*," 10 Wheat. 306 (Authorities Nos. 17, 18, and 3 respectively, under Rule 29), and other cases.

Edmonson v. Bloomshire, 7 Wall. 306 (311). (December Term, 1868.)

22. Sufficient bonds were given in each of these cases, which is necessary in every case in order that the appeal or writ of error may operate as a *supersedeas*, and stay execution on judgments removed into the Supreme Court for re-examination. What is necessary is, that the bond shall be sufficient; and when it is desired that the appeal or writ of error shall operate as a *supersedeas*, the bond must be given within ten days from the decree or judgment.

Slaughter House Cases, 10 Wall. 273. (December Term, 1869.)

23. A case where the appellee denied that the appeal operated as a *supersedeas*, because it was insisted that the bond given in the case was not in a sum sufficient to constitute indemnity for the whole amount of the decree. The Supreme Court said that where the judgment or decree is for the recovery of money, not otherwise secured, the indemnity must be for the whole amount of the judgment or decree, including just damages for delay, and costs and interest on the appeal; but that in all suits where the property in controversy necessarily follows the event of the suit, as in real actions, replevin, and in suits on mortgages, indemnity is only required in an amount sufficient to secure the sum recovered for the use or detention of the property and the other incidental items, as in cases where the judgment or decree is for money; that what is necessary is that it be sufficient, and when it is desired to make the appeal a *supersedeas*, that it be filed within ten days from the rendering of the decree, and the question of sufficiency must be determined in the first instance by the judge who signs the citation, but that after the allowance of the appeal that question as well as every other in the cause becomes cognizable in the Supreme Court; and it is therefore a matter of discretion with the Supreme Court to increase or diminish the amount of the bond, and to require additional sureties or otherwise, as justice may require, and that where a writ of error is not a *supersedeas*, a bond should only be in an amount sufficient for costs in case the judgment or decree is affirmed, and that as nothing appeared in the record to show that the indemnity was insufficient, and inasmuch as nothing appeared to the contrary, the Supreme Court was of the opinion that it must be presumed that the amount was sufficient.

French v. Shoemaker, 12 Wall. 86 (99). (December Term, 1870.)

24. It is the constant practice of the Supreme Court to allow irregularities and defects in *supersedeas* bonds to be obviated by granting leave

to the appellant or plaintiff in error to file a new bond within a reasonable time to be fixed by the Court in view of all the circumstances when the application is made.

Bigler v. Waller, 12 Wall. 142. (December Term, 1870.)

25. A case where it did not appear from the record that any copy of the writ of error was lodged for the defendants in error in the Clerk's office of the Supreme Court, it being necessary that such a writ should be filed within ten days to make the writ of error a *supersedeas*; nor did it appear when the bond was allowed and filed. It was dated, but the allowance was not dated, nor was its filing noticed. *Held* that the writ of error could not operate as a *supersedeas*.

O'Dowd v. Russell, 14 Wall. 402. (December Term, 1871.)

26. The Supreme Court, after stating that prior to the enactment of the 11th section of the Act of Congress of June 1st, 1872 (17 Stat. at Large, 198), the bond required in cases of appeals by the Act of Congress of September 24th, 1789 (1 Stat. at Large, 84), by the Act of Congress of March 3d, 1803 (2 Stat. at Large, 244), and by the 29th Rule of the Court, must be approved and filed within the ten days prescribed for the service of a writ of error, *held*, that by the Act of June 1st, 1872, it was expressly declared that a *supersedeas* bond might be executed within sixty days after the rendition of the judgment, and later, with the permission of the judge; that it was not said when the writ of error should be served; that its issuance must, of course, precede the execution of the bond; and that as the judge who signs the citation is still required to take the bond, the Supreme Court thinks it is sufficiently implied that it may be served any time before or simultaneously with the filing of the bond; that the giving of the bond alone is made the condition of the stay, and the section is silent as to the writ.

Telegraph Company v. Eyser, 19 Wall. 419. (October Term, 1873.)

27. In order that a writ may operate as a *supersedeas*, it is necessary that a copy of the writ should be lodged for the adverse party in the clerk's office where the record remains, and that the bond approved by the judge allowing the writ should also be filed there. Execution cannot issue upon the judgment until the expiration of ten days, exclusive of Sundays, from the entry thereof. If the writ of error and bond are filed before the expiration of the ten days an execution may issue, notwithstanding this. Under the act of June 1st, 1872 (17 Stat. at Large, 198), sec. 11, upon the filing of the bond within sixty days from the time of the entry of the judgment, a *supersedeas* may be obtained; but such *supersedeas* stays proceedings only from the filing of the bond. It prevents further proceedings under an execution which has been issued, but does not interfere with what has already been done.

Board of Commissioners v. Gorman, 19 Wall. 661. (October Term, 1873.)

28. A case in which the Supreme Court considered carefully the statutes and the prior authorities, and states that they all agree that if, after security has been accepted, the circumstances of the case, or of the parties, or of the sureties upon the bond have changed, so that security which, at the time it was taken, was "good and sufficient," does not continue to be so, the Supreme Court may, upon proper application, so adjudge and order as justice may require. But upon facts existing at the time the security was accepted, the action of the justice within the statute and within the Rules of practice adopted for his guidance is final, and the Supreme Court will presume that when he acted every fact was presented to him that could have been. So that while they agree that in a proper case, after an appeal or writ of error taken to the Supreme Court, they may interfere and require additional security upon a *supersedeas*, they will not attempt to direct or control the discretion of a judge or justice in respect to a case as it existed when he was called upon to act, except by the establishment of rules of practice. The action of the justice approving the bond was accordingly deemed conclusive.

Jerome v. McCarter, 21 Wall. 17 (31). (October Term, 1874.)

29. Under the law as it now stands, the service of a writ of error or the perfection of an appeal within sixty days, Sundays exclusive, after the rendering of the judgment or the passing of the decree complained of, is an indispensable prerequisite to a *supersedeas*, and it is not within the power of a justice or judge of the appellate Court to grant a stay of process on the judgment or decree if this has not been done. In this case, as the appeal was taken after the expiration of sixty days, the motion to vacate the *supersedeas* was granted. The statutes and authorities relating to the question of *supersedeas* are fully discussed in this case.

Kitchen v. Randolph, 93 U. S. 86 (92). (October Term, 1876.)

30. A motion for a rule upon the plaintiff in error to file a new *supersedeas* bond denied, as the showing made in the case did not satisfy the Supreme Court that the alleged insufficiency of the security taken when the writ of error was sued out, arose from any change in the circumstances of the sureties since the acceptance and approval of the bond. *Jerome v. McCarter*, 21 Wall. 17 (Authority No. 28, under Rule 29), approved.

Martin v. Hazard Powder Co., 93 U. S. 302. (October Term, 1876.)

31. Where the court below entered an order allowing an appeal, but refused to accept a *supersedeas* bond, the appeal being allowed within the time prescribed by law, and where one of the Justices of the Supreme Court, after the term at which the decree appealed from was entered, approved a bond to operate as a *supersedeas* when the same was filed in the office of the clerk of the court below, and it was thereafter filed, the Supreme Court refused to vacate the *supersedeas*, stating that the refusal of the Circuit Court to accept a *supersedeas* bond when offered during the

Term, did not necessarily take from a judge of that court, or a Justice of the Supreme Court, the power to approve one thereafter; and that they were satisfied that the appellants were entitled to their appeal, and that if taken in time, the *supersedeas* followed as a matter of law upon the giving of the necessary security; and that they ought not to set aside a *supersedeas*, in a case like this, simply because the justice who approved the bond, and thus allowed the appeal which operated as a *supersedeas*, might have sent the appellants to another judge with their application, if he had known all the facts.

Sage v. Railroad Co., 96 U. S. 712 (715). (October Term, 1877.)

32. In a case where the *supersedeas* bond was approved by the clerk of the court below, the Supreme Court stated that the security required upon writs of error and appeal must be taken by the judge or justice, and that he cannot delegate the power to the clerk. Accordingly, time was given to the appellant to file a *supersedeas* bond, properly executed and approved, within a certain time; otherwise the cause would stand dismissed.

O'Reilly v. Edrington, 96 U. S. 724. (October Term, 1877.)

33. To same effect as *O'Reilly v. Edrington* (Authority No. 32, under Rule 29,) is

National Bank v. Omaha, 96 U. S. 737. (October Term, 1877.)

34. In a case where the approval of a *supersedeas* bond was brought about by gross fraud and perjury, and the bond obtained in the most irregular way, the Supreme Court, although they approved of the ruling in *Jerome v. McCarter*, 21 Wall. 17 (Authority No. 28, under Rule 29), and were not inclined to depart from that ruling, stated that still in a case like the present, fraud is always open for inquiry, and that under the circumstances they had no hesitation in setting aside the approval of the bond; that an application to accept a new bond in place of an old one is addressed to the judicial discretion of the Court. Under the circumstances, the Supreme Court refused to accept a new bond, and granted the motion to vacate the *supersedeas*.

Railroad Co. v. Schutte, 100 U. S. 644. (October Term, 1879.)

35. A motion to vacate a *supersedeas* denied, the conditions of the bond in the case being claimed to be defective. It was in these words: that the appellants "shall duly prosecute their said appeal with effect, and, moreover, pay the amount of costs and damages rendered and to be rendered in case the decree shall be affirmed in said Supreme Court." It was claimed that the language of the bond should have followed the language of Section 1,000, Rev. Stat. of the United States in these words: "That the plaintiff in error or appellant, shall prosecute his writ or appeal to effect, and, if he fails to make his plea good, shall answer all damages and costs." The Supreme Court held that the language of the bond as given covered fully all the requirements of the statute.

Gay v. Parpart, 101 U. S. 391. (October Term, 1879.)

36. A bond on an appeal conditioned that we, the appellants, "will well and truly pay to the said defendants in said appeal and suit all such damages as they may recover against us in case it should be decided that the said appeal was wrongfully obtained." *Held* insufficient in form, either for the purposes of a *supersedeas* or an appeal, inasmuch as it contained no security for costs. The appeal was therefore dismissed, unless a new bond properly executed, and complying with the provisions of the law, be filed by a certain day.

Seward v. Corneau, 102 U. S. 161. (October Term, 1880.)

37. An appeal from the Supreme Court for the District of Columbia, where a final decree was rendered April 30th, 1872. An order was entered May 7th, on the minutes of the court below, sitting in General Term, allowing an appeal to the Supreme Court, but no security was then taken, either for costs or to obtain a *supersedeas*. A justice of the Court below approved a bond, conditioned according to law for a *supersedeas*, on the sixtieth day after the rendition of the decree, and also approved a citation which was served, and afterward, the justice being satisfied that the bond he had taken and approved was insufficient and inadequate security, ordered an additional bond with good and sufficient surety, to be duly approved within a certain time. The appellant presented an additional bond for approval within the required time, but it did not appear that it was ever accepted. The appellant fearing that the court below would proceed to carry its decree into effect, asked the Supreme Court for a writ of *supersedeas*. The Supreme Court denied the motion, holding that the *supersedeas* which resulted from taking the first bond was still in force and had never been vacated; that the power of the justice over the appeal and the security, in the absence of fraud, was exhausted when he took the security and signed the citation, and that from that time the control of the *supersedeas* as well as the appeal was with the Supreme Court.

Draper v. Davis, 102 U. S. 370. (October Term, 1880.)

38. A case where the doctrine laid down in *Jerome v. McCarter*, 21 Wall. 17 (Authority No. 28, under Rule 29), was followed and approved.

Williams v. Claflin, 103 U. S. 753. (October Term, 1880.)

39. A decree was entered August 2d, 1879, and on the same day an appeal was allowed on the complainant's giving bond according to law. No bond was ever given under this allowance, and the case was not docketed in the Supreme Court at the October Term, 1879. On August 1st, 1881, the circuit judge approved a bond for an appeal from the decree, which was filed the same day, and signed a citation which was served August 18th. On October 8th the Circuit Court entered an order allowing the appeal *nunc pro tunc* as of August 1st. *Held*, that the circuit judge by taking the security and signing the citation allowed the appeal, that no formal order

of allowance was necessary, that the appeal was therefore taken in time, and that the order of October 8th was not required to give it effect.

Brandies v. Cochrane, 105 U. S. 262. (October Term, 1881.)

40. After the bond for appeal and the docketing of the cause in the Supreme Court, the jurisdiction of the court below is gone. From that time the suit is cognizable only in the Supreme Court.

Keyser v. Farr, 105 U. S. 265. (October Term, 1881.)

41. An appeal in a foreclosure suit where the *supersedeas* bond was conditioned that "if the said *Omaha Hotel Company* shall duly prosecute said appeal to effect, and pay said *Jephtha H. Wade* and others [naming them], their executors, administrators, or assigns, for the use and detention of the property covered by the mortgage in controversy in this suit, during the pendency of said appeal, and the costs of the suit, and just damages for delay, and costs and interest on said appeal, if it fails to make good its plea, this obligation shall be void ; otherwise to remain in full force and virtue." *Held*, that if the condition of an appeal bond or bond in error substantially conforms to the requirements of the statute it is sufficient to sustain it, though it contain variations of language ; and that if further conditions be superadded, the bond is not therefore invalid, so far as it is supported by the statute, but only as to the superadded conditions. The words "use and detention," therefore, in the bond were deemed surplusage. The authorities are considered at length in this case.

Kountze v. Omaha Hotel Co., 107 U. S. 378 (396.) (October Term, 1882.)

42. A case where, as it appeared that a personal decree for money could not be given, and as the circumstances of the parties were not shown to have changed since the security was taken, the Supreme Court denied a motion for additional security on the *supersedeas* bond.

Johnson v. Waters, 108 U. S. 4. (October Term, 1882.)

43. An appeal which the Supreme Court dismissed for want of jurisdiction. The appellee had not appeared, and was never served with the citation. The decree was entered on the 14th of June, 1879, and at the foot of the entry was the following: "Petitioner prays an appeal, which is granted upon bond and security being given, according to law, within thirty days." A copy of what purported to be an appeal bond, filed on the 3d of July, 1879, was found with the transcript, but there was no evidence that it was ever approved or taken as good and sufficient security by the court, or any justice or judge thereof. A commissioner of the Circuit Court certified that he knew the obligors to be good and responsible for any costs that might accrue in the cause, but the Supreme Court held that this was not enough ; that section 1000 of the Revised Statutes requires the justice or judge signing the citation to take the security ; that this power cannot be delegated to a clerk or to a commissioner ; that if the appeal is allowed in open court the security may be taken by

the court, and no citation is necessary; but that if the security is not given until after the term is over, a citation must be issued and served.

Haskins v. St. Louis & S. E. Railway Co., 109 U. S. 106. (October 29th, 1883.)

44. A case where the decree appealed from was rendered October 30th, 1882, and an appeal was then prayed for and allowed. No bond of any kind was executed until May 10th, 1883, when one of the Justices of the Supreme Court granted a *supersedeas* and took the necessary security. The Supreme Court denied a motion to vacate the *supersedeas* because no appeal was perfected within sixty days after the rendition of the decree appealed from and also to dismiss the appeal, and *held*, after reviewing the cases, that, in view of the rulings contained therein, if a court in session and acting judicially allows an appeal, which is entered of record without taking a bond within sixty days after rendering a decree, a Justice or Judge of the Appellate Court may, in his discretion, grant a *supersedeas* after the expiration of that time, under the provisions of sec. 1007 of the Revised Statutes; but that nothing contained in their opinion was to be construed as affecting appeals other than such as are allowed by the Court acting judicially and in Term time.

Peugh v. Davis, 110 U. S. 227 (229). (January 21st, 1884.)

45. *Texas & Pacific Railway Co. v. Murphy*, 111 U. S. 488. (April 21st, 1884.)

Rule 30.

REHEARING.

A petition for rehearing after judgment can be presented only at the term at which judgment is entered, unless by special leave granted during the term; and must be printed, and briefly and distinctly state its grounds, and be supported by certificate of counsel; and will not be granted, or permitted to be argued, unless a justice who concurred in the judgment desires it, and a majority of the court so determines.

HISTORY.

This Rule has never either in its present form or in substance been formally adopted or published as a General Rule of the Supreme Court prior to the Revision of 1884. Reference is made in the case of *Public Schools v. Walker*, 9 Wall. 603 (604) (December Term, 1869), to the fact that CHIEF JUSTICE TANEY, at the December Term, 1852, stated a Rule on the subject of rehearing in these words:

“No re-argument will be granted in any case unless a member of the

court who concurred in the judgment desires it, and when that is the case it will be ordered without waiting for the application of counsel."

This Rule as so stated does not however appear as a Rule in 14 Howard Reports, which covers December Term, 1852, nor in any subsequent Supreme Court Reports, but is substantially stated as the Rule governing re-hearings in *Brown v. Aspden*, 14 How. 25. For this Rule in the Revision of 1884, see 108 U. S. 591.

AUTHORITIES.

PRIOR TO THE PROMULGATION OF THE RULE.

See the Authorities cited under Clause 5, Rule 24, where applicable, and also

1. On an application for a re-hearing the Supreme Court stated that as the original decree had not been carried with execution, they thought it proper, under the peculiar circumstances of the case, to allow a rehearing, but that this was not to be drawn into precedent; nor was any point previously determined to be brought again into litigation, unless the state of the facts respecting it should be allowed by the new evidence.

Federal Court of Appeals. *Miller v. The Ship "Resolution,"* 2 Dallas, 19. (December Session, 1781.)

2. It is too late to question the jurisdiction of the Circuit Court after the cause has been sent back by mandate.

Skillem's Executors v. May's Executors, 6 Cranch, 267. (February Term, 1810.)

[See same case under Clause 5, Rule 24.]

3. On the first day of February Term, 1812, counsel moved for and obtained a rule to show cause why the cause, which was decided at February Term, 1810, should not be reheard. The Supreme Court afterwards decided that the case would not be reheard after the term in which it had been decided.

Hudson v. Guestier, 7 Cranch, 1. (February Term, 1812.)

4. A final judgment of the Supreme Court is supposed to be conclusive upon the rights which it decides, and no statute has provided any process by which the Supreme Court can revise its own judgments. In several cases which have been formally adjudged in the Supreme Court, the same point was argued by counsel, and expressly overruled. It was solemnly held that a final judgment of the Supreme Court was conclusive upon the parties, and could not be re-examined. From motives of a public nature, however, the Supreme Court were willing to waive all objections, and to go back and re-examine the question of jurisdiction as it stood upon the record formerly in judgment.

Martin v. Hunter's Lessee, 1 Wheat. 304 (355). (February Term, 1816.)

5. The Circuit Courts have no power to set aside their decrees in equity, after the term at which they are rendered.

Cameron v. M'Roberts, 3 Wheat. 591. (February Term, 1818.)

6. It is not denied as a general rule that a fact which has been directly tried, and decided by a court of competent jurisdiction, cannot be contested again between the same parties, in the same or any other court, but the rule does not apply to points which come only collaterally under consideration, or are only incidentally considered, or can only be argumentatively inferred from the decree.

Hopkins v. Lee, 6 Wheat. 109. (February Term, 1821.)

7. The Supreme Court denied a motion for a rehearing, being of opinion that it was too late to grant a rehearing in a cause after it had been remitted to the court below, to carry into effect the decree of the Supreme Court, according to its mandate.

Browder v. M'Arthur, 7 Wheat. 58. (February Term, 1822.)

[See same case under Clause 5, Rule 24.]

8. After a case has been dismissed by the Supreme Court for want of jurisdiction, the pleadings having been technically defective, the Supreme Court will not, at a subsequent term, allow them to be amended, and the case to be reinstated on the docket. It would be, in effect, a reversal of the former decree, after the case had been finally disposed of in the Supreme Court.

Jackson v. Ashton, 10 Pet. 480. (January Term, 1836.)

[See same case under Clause 5, Rule 24.]

9. No principle is better settled, or of more universal application, than that no court can reverse or annul its own final decrees or judgments, for errors of fact or law, after the term in which they have been rendered, except for clerical mistakes. After a mandate no rehearing will be granted.

Ex parte Sibbald v. The United States, 12 Pet. 488 (492). (January Term, 1838.)

[See same case under Clause 5, Rule 24.]

10. A case which was affirmed by a divided court in December, 1852; and in February, 1853, the appellants filed a petition for a rehearing. In delivering the opinion of the Supreme Court, MR. CHIEF JUSTICE TANEY stated in substance, that the Court had been referred to the practice of the English Chancery Court in support of the application, and that the argument presupposed that the Supreme Court in cases in equity had adopted the rules and practice of the English chancery; that this was a mistake; that the English chancery is a court of original jurisdiction, and the Supreme Court was sitting as an appellate tribunal, and that it would be impossible, from the nature and office of the two tribunals, to adopt the same rules of practice in both. The Court also stated that nothing could show this

more strongly than the present application; that by the established rules of chancery practice, a rehearing, in the sense in which that term is used in proceedings in equity, cannot be allowed after the decree is enrolled; that if the party desires it, it must be applied for before the enrollment; but no appeal would lie until after it was enrolled, either actually, or by construction of law, and that, consequently, the time for a rehearing must have gone by before an appeal could be taken; that in the House of Lords, in England, to which the appeal lies from the Court of Chancery, a rehearing is altogether unknown; that a reargument may be ordered, if the house desires it, for its own satisfaction, but that the chancery rules in relation to rehearing, in the technical sense of the word, are altogether inapplicable to proceedings on appeal. The Supreme Court further stated that there was nothing in the history of the English Court of Chancery to induce them to adopt rules in relation to rearguments, analogous to the chancery practice on applications for a rehearing; that according to the general practice of that court, one rehearing, where the application was sanctioned by the signatures of two counsel, was a matter of course; that this facility of obtaining one rehearing, naturally led to others, and that in cases of interest or difficulty, two, or even three, rehearings were sometimes allowed, under the special leave of the court, before the decree was enrolled, and, consequently, before it could be removed to the House of Lords, and that the natural result of this practice was to produce some degree of carelessness in the first argument, and hesitation and indecision in the court.

The mischievous results of the practice, as, for example, the enormous expenses, and the delay to other suitors, are pointed out by the Supreme Court, and they state that if they should adopt a practice analogous to that of the English chancery, they would soon find themselves in the same predicament, and they deem it safer to adhere to the Rule theretofore acted upon, viz., call for a reargument after judgment entered, where doubts are entertained which it is supposed may be removed by further discussion at the bar, *provided* the order for reargument is entered at the same term; and the Rule of the Court is stated to be "that no reargument will be heard in any case after judgment is entered, unless some member of the Court who concurred in the judgment afterwards doubts the correctness of his opinion, and desires a further argument on the subject. And when that happens, the Court will, of its own accord, apprise the counsel of its wishes, and designate the points on which it desires to hear them." The application for a reargument was denied.

Brown v. Aspden, 14 How. 25 (26 & 27). (December Term, 1852.)

[See same case under Rule 3.]

11. The Supreme Court cannot grant a motion for a rehearing of a cause which has been transmitted to the court below, and that too in a case where the application was made by counsel for the appellee on the ground that he was prevented by sickness from attending the Court at the

time of the hearing, and where the cause of absence was, by a failure in the mail, unknown to the Court at the time of the argument. As a brief of the counsel was filed, the Supreme Court stated that it was not probable that an oral argument would have changed the result.

Peck v. Sanderson, 18 How. 42. (December Term, 1855.)

12. After a cause has been argued and decided, the Supreme Court will not hear a motion to change the decree based on affidavits taken to show facts which do not appear in the record.

United States v. Knight's Administrator, 1 Black, 488. (December Term, 1861.)

13. Where the Supreme Court of its own motion does not order a rehearing, it will be proper for counsel to submit without argument, as was done in this case, a brief written or printed petition or suggestion of the point or points thought important. If upon such petition or suggestion any judge who concurred in the decision thinks proper to move for a rehearing, the motion will be considered. If not so moved, the motion will be denied as a matter of course. The petition in this case was denied, as no member of the Supreme Court who concurred in the judgment desired a reargument, and the Rule was stated to have been long since established and to have been stated by CHIEF JUSTICE TANEY at December Term, 1852, in the language given in the History of this Rule.

Public Schools v. Walker, 9 Wall. 603. (December Term, 1869.)

14. Repeated decisions of the Supreme Court have established the Rule that a final judgment or decree of that Court is conclusive upon the parties, and that it cannot be re-examined at a subsequent term, as there is no Act of Congress which confers any such authority. (Citing *Skillery's Executors v. May's Executors*, 6 Cranch, 267. Authority No 2, under Rule 30.)

Rehearings are never granted where a final decree has been entered and the mandate sent down, unless the application is made at the same term, except in cases of fraud (Citing *Browder v. M'Arthur*, 7 Wheaton, 58. Authority No. 7, under Rule 30; "*The Santa Maria*," 10 Wheaton, 442. Authority No. 6, under Clause 5, Rule 24), and in this case the Supreme Court refused to grant a rehearing after nine terms had elapsed, though perhaps in form the judgment which it was sought to have reheard was not quite regularly given. The Supreme Court has no power to review its decisions, whether in a case at law or in equity, and a final decree is as conclusive as a judgment at law. (Citing *Washington Bridge Co. v. Stewart*, 3 How. 424; *Ex parte Sibbald*, 12 Peters, 492. Authorities Nos. 16, 17, under Clause 5, Rule 24; *Peck v. Sanderson*, 18 How. 42. Authority No. 11, under Rule 30.)

Noonan v. Bradley, 12 Wall. 121 (129). (December Term, 1870.)

[See same case under Clause 5, Rule 24.]

15. It is a well settled Rule of the Supreme Court, to which it has

steadily adhered, that no rehearing is granted unless some member of the Court who concurred in the judgment, expresses a desire for it, and not then unless the proposition receives the support of a majority of the Court. For this reason, and for the better reason that the pressure of business in the Court does not permit it, *no reply to the petition whatever is allowed from the other side or given by the Court.*

In this case the Supreme Court, while stating that the petition for a rehearing presented some features which required a departure from the rule, denied the petition, holding in effect that a rehearing will not be granted on the ground that the record on which the case was heard was imperfect, it appearing by an examination of the parts which, on the original hearing, were left out, but which were present on the motion, that they presented nothing but matter which did not affect the merits of the case, or matter which only further established that which the Supreme Court in giving its decree considered to be already otherwise abundantly proved.

Ambler v. Whipple, 23 Wall. 278. (October Term, 1874.)

16. A case wherein the Supreme Court states that a petition for rehearing after judgment, under the Rule promulgated in *Public Schools v. Walker*, 9 Wall. 603 (Authority No. 13 under Rule 30), cannot be filed except at the term at which the judgment was rendered; that at the end of the term, the parties are discharged from further attendance on all causes decided, and that the Supreme Court has no power to bring them back, and after that they can do no more than to correct any clerical errors that may be found in the record of what they have done. (Citing *Hudson v. Guestier*, 7 Cranch, 1. Authority No. 3 under Rule 30.) The case of *Brown v. Aspden*, 14 How. 25 (Authority No. 10 under Rule 30), is there referred to as a case where the practice in respect to orders for rearguments was first formally announced, and where the Rule in this particular was not extended, for MR. CHIEF JUSTICE TANEY was careful to say that the order for reargument might be made after judgment, *provided* it was entered at the same term; that the same limitation was maintained in *United States v. Knight's Administrator*, 1 Black, 488 (Authority No. 12 under Rule 30); that down to that time, such an order could be made on the application of some member of the Court who concurred in the judgment, and this continued until *Public Schools v. Walker*, 9 Wall. 603 (Authority No. 13 under Rule 30), when leave was given counsel to submit a petition to the same effect; and that in all other respects the Rule is now substantially the same as it was before this relaxation.

Brooks v. Railroad Company, 102 U. S. 107. (October Term, 1880.)

Rule 31.

FORM OF PRINTED RECORDS AND BRIEFS.

All records, arguments, and briefs printed for the use of the court must be in such form and size that they can be conveniently bound together, so as to make an ordinary octavo volume.

HISTORY.

The first and only Rule on the subject matter of this Rule prior to this General Rule was General Rule 31, promulgated December 1st, 1879, 100 U. S. ix. It was in these words, viz.:

“All records and arguments printed for the use of the court must be in such form and size that they can be conveniently cut and bound so as to make an ordinary octavo volume. After the first day of October, 1880, the clerk will not receive or file records or arguments intended for distribution to the judges that do not conform to the requirements of this rule.”

For this Rule in the Revision of 1884, see 108 U. S. 591.

AUTHORITIES.

1. General Rule 31 declared to relate only to the form and size of the printed records, briefs, and arguments, and to have nothing to do with the fee of the Clerk for printing the record. See under paragraph 13 of Clause 7, Rule 24.

Bean v. Patterson, 110 U. S. 401. (February 4th, 1884.)

Rule 32.

WRITS OF ERROR AND APPEALS UNDER SECTION 5 OF THE ACT OF MARCH 3D, 1875.

1. Writs of error and citations under section 5 of the Act of March 3d, 1875, “to determine the jurisdiction of the circuit courts of the United States, and to regulate the removal of causes from the State courts, and for other purposes,” for the review of orders of the circuit courts dismissing suits, or remanding suits to a State court, must be made returnable within thirty days after date, and be served before the return-day.

HISTORY.

This Clause is in precisely the same language as Clause 1 of General

Rule 32, promulgated January 16th, 1882, 104 U. S. ix., which was the first General Rule on the subject. For this Clause in the Revision of 1884, see 108 U. S. 591.

FEDERAL STATUTES.

“Sec. 5. That if, in any suit commenced in a circuit court or removed from a State court to a circuit court of the United States, it shall appear to the satisfaction of said circuit court, at any time after such suit has been brought or removed thereto, that such suit does not really and substantially involve a dispute or controversy properly within the jurisdiction of said circuit court, or that the parties to said suit have been improperly or collusively made or joined, either as plaintiffs or defendants, for the purpose of creating a case cognizable or removable under this act, the said circuit court shall proceed no further therein, but shall dismiss the suit or remand it to the court from which it was removed as justice may require, and shall make such order as to costs as shall be just; but the order of said circuit court dismissing or remanding said cause to the State court shall be reviewable by the Supreme Court on writ of error or appeal, as the case may be.”

Act of Congress of 3d March, 1875, ch. 137, sec. 5, 18 Stat. at Large, 470 (472).

AUTHORITIES.

See the Authorities collected under Clauses 1, 2, 3, 4, 5, Rule 8, where applicable.

2. In all cases where a writ of error or appeal is brought to this court under the provisions of that act, it shall be the duty of the plaintiff in error or the appellant to docket the case and file the record in this court within thirty-six days after the date of the writ of error, or the taking of the appeal, if there shall be a term of the court pending at that time, and if not, then during the first six days of the next term. If default be made in this particular, proceedings to docket and dismiss may be had as in other cases.

HISTORY.

This Clause, with the exception of some immaterial verbal alterations, is the same as Clause 2 of General Rule 32, promulgated January 16th, 1882, 104 U. S. ix., which was the first General Rule on the subject. For this Clause in the Revision of 1884, see 108 U. S. 591.

FEDERAL STATUTES.

See Act of Congress of 3d March, 1875, ch. 137, sec. 5, 18 Stat. at Large, 470 (472), quoted under Clause 1, Rule 32.

AUTHORITIES.

See the Authorities collected under Clauses 1 and 2, Rule 9, where applicable.

3. All such cases will be advanced on motion. The motion may be made *ex parte*. If granted, the party on whose motion the case shall have been advanced may have the case submitted on printed briefs, on serving, with a copy of his brief, on the adverse party, a notice of intention to submit, such as is required by Rule 6 to be given upon motions to dismiss writs of error and appeals. [As amended May 5th, 1884.]

HISTORY.

This clause was represented in General Rule 32 promulgated January 16th, 1882, 104 U. S. ix., which was the first General Rule on the subject, by Clause 4 thereof, which was in these words:

“All such cases will be advanced on motion, and heard under the rules applicable to motions to dismiss.”

In the Revision of January 7th, 1884 (108 U. S. 592), Clause 3 of General Rule 32 represented Clause 4 of General Rule 32 as promulgated January 16th, 1882, and was in these words :

“3. All such cases will be advanced on motion, and heard under the rules prescribed by Rule 6 in regard to motions to dismiss writs of error and appeals.”

On May 5th, 1884, Clause 3 of General Rule 32 of the Revision of January 7th, 1884 was amended so as to read as above stated. See 111 U. S.

FEDERAL STATUTES.

See Act of Congress of 3d March, 1875, ch. 137, sec. 5, 18 Stat. at Large, 470 (472) quoted under Clause 1, Rule 32.

AUTHORITIES.

See the Authorities collected under the appropriation Clauses of Rule 6, and of Rule 26 when applicable, also.

1. A motion to advance under Rule 32 an appeal from a decree on the

merits in a suit *removed* from a State Court to a Circuit Court, was denied, the Supreme Court holding that Rule 32 applies only to cases which have been *remanded* by a Circuit Court to a State Court, or dismissed, under the authority of sec. 5, of the act of March 3d, 1875, c. 137. The motion to remand to the State Court had been denied, and the cause was regularly heard and decided by the Circuit Court. Also *held*, that motions under this Rule should be accompanied by an agreed statement of the case, or by such extracts from the record as would show that the case was one to which the Rule was applicable.

Call v. Palmer, 106 U. S. 39. (October Term, 1882.)

2. A motion to advance a suit against a tax collector was denied, the Supreme Court *holding* that Rule 32 applied only to writs of error and appeals brought to the Supreme Court under the provisions of sec. 5 of the Act of March 3d, 1875, that is to say, to writs of error and appeals from orders of the Circuit Courts remanding causes which have been removed from a State Court, and from orders dismissing suits because they do not really and substantially involve disputes or controversies properly within the jurisdiction of the Circuit Courts, or because the parties to the suits have been improperly made or joined for the purpose of creating a case cognizable under that act. These cases did not come under the Act. Neither were they entitled to be advanced merely because the questions involved may be of great public importance.

Poindexter v. Greenhow, *White v. Same*, *Carter v. Same*, 109 U. S. 63. (October 15th, 1883.)

4. As soon as such a case is docketed and advanced, the record shall be printed, unless the parties stipulate to the contrary, and file their stipulation with the clerk.

HISTORY.

With the exception of the words "and advanced," this Clause is the same as Clause 3 of General Rule 32, promulgated January 16th, 1882, 104 U. S. ix., which was the first General Rule on the subject. For this Clause in the Revision of 1884, see 108 U. S. 592.

FEDERAL STATUTES.

See Act of Congress of 3d March, 1875, ch. 137, sec. 5, 18 Stat. at Large, 470 (472) quoted under Clause 1, Rule 32.

AUTHORITIES.

See the Authorities collected under the appropriate clauses of Rule 10, where applicable.

5. In all cases where a period of thirty days is included in the times fixed by this rule, it shall be extended to sixty days in writs of error and appeals from California, Oregon, or Nevada.

HISTORY.

With the exception of an immaterial verbal alteration this Clause is the same as Clause 6 of General Rule 32, promulgated January 16th, 1882, 104 U. S. ix., which was the first General Rule on the subject. For this Clause in the Revision of 1884, see 108 U. S. 592.

FEDERAL STATUTES.

See Act of Congress of 3d March, 1875, ch. 137, sec. 5, 18 Stat. at Large, 470 (472), quoted under Clause 1, Rule 32.

AUTHORITIES.

See the Authorities collected under Clause 4, Rule 9.

Rule 33.

MODELS, DIAGRAMS, AND EXHIBITS OF MATERIAL.

All models, diagrams, and exhibits of material, placed in the custody of the marshal for the inspection of the court on the hearing of a case, must be taken away by the parties within one month after the case is decided. When this is not done, it shall be the duty of the marshal to notify the counsel in the case, by mail or otherwise, of the requirements of this rule; and if the articles are not removed within a reasonable time after the notice is given, he shall destroy them, or make such other disposition of them as to him may seem best.

HISTORY.

With the exception of some immaterial verbal changes this Rule is the same as General Rule 33, promulgated November 13th, 1882, 106 U. S. viii., which was the first General Rule on the subject. For this Clause in the Revision of 1884, see 108 U. S. 592.

APPENDIX.

I.

FEDERAL STATUTES

RELATING TO

APPEALS FROM THE COURT OF CLAIMS

AND

REGULATIONS

OF THE

SUPREME COURT OF THE UNITED STATES

RELATING TO SUCH APPEALS.

FEDERAL STATUTES

RELATING TO

APPEALS FROM THE COURT OF CLAIMS.

SEC. 707. An appeal to the Supreme Court shall be allowed, on behalf of the United States, from all judgments of the Court of Claims adverse to the United States, and on behalf of the plaintiff in any case where the amount in controversy exceeds three thousand dollars, or where his claim is forfeited to the United States by the judgment of said court, as provided in section one thousand and eighty-six.

Revised Statutes (Second Edition), § 707, p. 132; Act of Congress of 3d March, 1863, ch. 92, §§ 5 and 11, 12 Stat. at Large, pp. 766, 767; Act of Congress of 25th June, 1868, ch. 71, sec. 1, 15 Stat. at Large, 75; Act of Congress of 3d March, 1875, ch. 133, sec. 1, 18 Stat. at Large, 452.

For Sec. 1086, Revised Statutes above referred to, see the section printed at length among the Federal Statutes immediately preceding the Rules of the Court of Claims.

SEC. 708. All appeals from the Court of Claims shall be taken within ninety days after the judgment is rendered, and shall be allowed under such regulations as the Supreme Court may direct.

Revised Statutes (Second Edition), § 708, p. 132; Act of Congress of 3d March, 1863, ch. 92, §§ 5 and 11, 12 Stat. at Large, pp. 766, 767; Act of Congress of 25th June, 1868, ch. 71, sec. 1, 15 Stat. at Large, 75; Act of Congress of 3d March, 1875, ch. 133, sec. 1, 18 Stat. at Large, 452.

REGULATIONS
OF
THE SUPREME COURT
RELATING TO
APPEALS FROM THE COURT OF CLAIMS.

ADOPTED IN 1866, AND AFTERWARDS ADDED TO AND AMENDED.

Rule 1.

In all cases hereafter decided in the Court of Claims, in which, by the act of Congress, such appeals are allowable, they shall be heard in the Supreme Court upon the following record, and none other :

1. A transcript of the pleadings in the case, of the final judgment or decree of the court, and of such interlocutory orders, rulings, judgments, and decrees as may be necessary to a proper review of the case.

2. A finding by the Court of Claims of the facts in the case, established by the evidence, in the nature of a special verdict, but not the evidence establishing them ; and a separate statement of the conclusions of law upon said facts on which the court founds its judgment or decree. The finding of facts and conclusions of law to be certified to this court as part of the record.

Rule 2.

NOW OBSOLETE.

In all cases in which judgments or decrees have *heretofore been rendered*, when either party is by law entitled to an appeal, the party desiring it shall make application to the Court of Claims by petition for the allowance of such appeal. Said petition shall contain a distinct specification of the errors alleged to

have been committed by said court in its rulings, judgment, or decree in the case. The court shall, if the specification of alleged error be correctly and accurately stated, certify the same, or may certify such alterations and modifications of the points decided and alleged for error as, in the judgment of said court, shall distinctly, fully, and fairly present the points decided by the court. This, with the transcript mentioned in Rule 1 (except the statement of facts and law therein mentioned), shall constitute the record on which those cases shall be heard in the Supreme Court.

Rule 3.

In all cases an order of allowance of appeal by the Court of Claims, or the Chief Justice thereof in vacation, is essential, and the limitation of time for granting such appeal shall cease to run from the time an application is made for the allowance of appeal.

Rule 4.

In all cases in which either party is entitled to appeal to the Supreme Court, the Court of Claims shall make and file their findings of facts and their conclusions of law therein, in open court, before or at the time they enter judgment in the case.

Rule 5.

In every such case, each party, at such time before trial, and in such form, as the court may prescribe, shall submit to it a request to find all the facts which the party considers proven and deems material to the due presentation of the case in the finding of facts.

Rule 6.

Ordered, That Rule 1, in reference to appeals from the Court of Claims, be and the same is hereby made applicable to appeals in all cases heretofore or hereafter decided by that court under the jurisdiction conferred by the act of June 16, 1880, c. 243, "to provide for the settlement of all outstanding claims against the District of Columbia, and conferring jurisdiction on the Court of Claims to hear the same, and for other purposes." (Adopted May 7, 1883.)

II.
FEDERAL STATUTES
RELATING TO THE
COURT OF CLAIMS
AND
RULES
OF THE
COURT OF CLAIMS.

JUDGES AND OFFICERS OF THE COURT OF CLAIMS.

Chief Justice.

CHARLES D. DRAKE,
APPOINTED DECEMBER 12, 1870.

Judges.

CHARLES C. NOTT,
APPOINTED FEBRUARY 22, 1865.

WM. A. RICHARDSON,
APPOINTED JUNE 2, 1874.

GLENNI W. SCOFIELD,
APPOINTED MAY 20, 1881.

LAWRENCE WELDON,
APPOINTED NOVEMBER 24, 1883.

Chief Clerk.

ARCHIBALD HOPKINS,
APPOINTED JANUARY 1, 1873.

Assistant Clerk.

JOHN RANDOLPH,
APPOINTED DECEMBER 2, 1867.

Assistant Attorney-General.

(Charged with the defence of the Government.)

THOMAS SIMONS,
APPOINTED MAY 28, 1875.

Assistants.

JOHN S. BLAIR,
APPOINTED DECEMBER 2, 1873.

ISAAC S. LYON,
APPOINTED JULY 1, 1880.

JOHN C. FAY,
APPOINTED JULY 12, 1880.

ANDRÉ BREWSTER,
APPOINTED JUNE 2, 1882.

FRANK H. HOWE,
APPOINTED NOVEMBER 6, 1882.

GEORGE L. DOUGLASS,
APPOINTED AUGUST 16, 1883.

Bailiff.

STARK B. TAYLOR,
APPOINTED MESSENGER MAY 16, 1855; BAILIFF JUNE 6, 1863.

Messenger.

RICHARD F. KEARNEY,
APPOINTED NOVEMBER 26, 1877.

SESSIONS OF THE COURT OF CLAIMS.

There is one annual session of the Court of Claims held at the City of Washington, beginning on the first Monday in December, and continuing as long as may be necessary for the prompt disposition of the business of the court. [Revised Statutes (Second Edition) § 1052, p. 194.]

FEDERAL STATUTES.

RELATING TO THE

COURT OF CLAIMS.

SECTIONS OF THE REVISED STATUTES WHICH ARE APPLICABLE.

SEC. 188. In all suits brought against the United States in the Court of Claims founded upon any contract, agreement, or transaction with any Department, or any Bureau, officer, or agent of a Department, or where the matter or thing on which the claim is based has been passed upon and decided by any Department, Bureau, or officer authorized to adjust it, the Attorney-General shall transmit to such Department, Bureau, or officer, a printed copy of the petition filed by the claimant, with a request that the Department, Bureau, or officer, shall furnish to the Attorney-General all facts, circumstances, and evidence touching the claim in the possession or knowledge of the Department, Bureau, or officer.

Such Department, Bureau, or officer shall, without delay, and within a reasonable time, furnish the Attorney-General with a full statement, in writing, of all such facts, information, and proofs.

The statement shall contain a reference to or description of all such official documents or papers, if any, as may furnish proof of facts referred to in it, or may be necessary and proper for the defence of the United States against the claim, mentioning the Department, office, or place where the same is kept or may be procured. If the claim has been passed upon and decided by the Department, Bureau, or officer, the statement shall succinctly state the reasons and principles upon

which such decision was based. In all cases where such decision was founded upon any act of Congress, or upon any section or clause of such act, the same shall be cited specifically; and if any previous interpretation or construction has been given to such act, section, or clause by the Department, Bureau, or officer, the same shall be set forth succinctly in the statement, and a copy of the opinion filed, if any, shall be annexed to it. Where any decision in the case has been based upon any regulation of a Department, or where such regulation has, in the opinion of the Department, Bureau, or officer transmitting such statement, any bearing upon the claim in suit, the same shall be distinctly quoted at length in the statement.

But where more than one case, or a class of cases, is pending, the defence to which rests upon the same facts, circumstances, and proofs, the Department, Bureau, or officer shall only be required to certify and transmit one statement of the same, and such statement shall be held to apply to all such cases, as if made out, certified, and transmitted in each case respectively.

Revised Statutes (Second Edition), § 188, p. 29; Act of Congress of 25th June, 1868, ch. 71, sec. 6, 15 Stat. at Large, 76.

Sec. 707 and 708 Revised Statutes (Second Edition), 132.

See same among Federal Statutes under Regulations of the Supreme Court relating to appeals from the Court of Claims, page 244.

SEC. 748. No clerk, assistant, or deputy clerk, of any territorial, district, or circuit court, or of the Court of Claims, or the Supreme Court of the United States, or marshal or deputy marshal of the United States within the district for which he is appointed, shall act as a solicitor, proctor, attorney, or counsel in any cause depending in either of said courts, or in any district for which he is acting as such officer.

Revised Statutes (Second Edition), § 748, p. 141; Act of Congress of 16th January, 1873, ch. 36, sec. 1, 17 Stat. at Large, 411; See Act of Congress of 3d March, 1879, ch. 183, par. 2, 20 Stat. at Large, 410.

SEC. 749. Whosoever violates the preceding section shall be stricken from the roll of attorneys by the court upon complaint, upon which the respondent shall have due notice, and be heard

in his defence; and in the case of a marshal or deputy marshal so acting, he shall be recommended by the court for dismissal from office:

Revised Statutes (Second Edition), § 749, p. 141; Act of Congress of 16th January, 1873, ch. 36, sec. 2, 17 Stat. at Large, 411.

SEC. 1049. The Court of Claims, established by the act of February twenty-four, eighteen hundred and fifty-five, shall be continued. It shall consist of a chief justice and four judges, who shall be appointed by the President, by and with the advice and consent of the Senate, and hold their offices during good behavior. Each of them shall take an oath to support the Constitution of the United States, and to discharge faithfully the duties of his office, and shall be entitled to receive an annual salary of four thousand five hundred dollars, payable quarterly from the Treasury.

Revised Statutes (Second Edition), § 1049, p. 194; Act of Congress of 24th February, 1855, ch. 122, sec. 1, 10 Stat. at Large, 612; Act of Congress of 3d March, 1863, ch. 92, sec. 1, 12 Stat. at Large, 765; Act of Congress of 8th May, 1872, ch. 140, sec. 13, 17 Stat. at Large, 85; Act of Congress of 3d March, 1881, ch. 130, sec. 1, par. 4, 21 Stat. at Large, 385.

SEC. 1050. The Court of Claims shall have a seal, with such devices as it may order.

Revised Statutes (Second Edition), § 1050, p. 194; Act of Congress of 3d March, 1863, ch. 92, sec. 4, 12 Stat. at Large, 766.

SEC. 1051. It shall be the duty of the Speaker of the House of Representatives to appropriate such rooms in the Capitol, at Washington, for the use of the Court of Claims, as may be necessary for their accommodation, unless it appears to him that such rooms cannot be so appropriated without interfering with the business of Congress. In that case, the court shall procure, at the city of Washington, such rooms as may be necessary for the transaction of their business.

Revised Statutes (Second Edition), § 1051, p. 194; Act of Congress of 24th February, 1855, ch. 122, sec. 10, 10 Stat. at Large, 614; Joint Resolution of Congress of 1st July, 1879, No. 20, sec. 2, 21 Stat. at Large, 55.

SEC. 1052. The Court of Claims shall hold one annual session, at the city of Washington, beginning on the first Monday in

December, and continuing as long as may be necessary for the prompt disposition of the business of the court.

And any two of the judges of said court shall constitute a quorum, and may hold a court for the transaction of business.

Revised Statutes (Second Edition), § 1052, p. 194 ; Act of Congress of 24th February, 1855, ch. 122, sec. 11, 10 Stat. at Large, 614 ; Act of Congress of 6th August, 1856, ch. 81, sec. 1, 11 Stat. at Large, 30. The last Clause of the foregoing section was in effect amended by ch. 468 of Act of Congress of 23d June, 1874, 18 Stat. at Large, 252, which was in the following words : *Be it enacted, &c.*, That any three judges of the Court of Claims shall constitute a quorum : *Provided*, That the concurrence of three judges shall be necessary to the decision of any case.

SEC. 1053. The said court shall appoint a chief clerk, an assistant clerk, if deemed necessary, a bailiff, and a messenger. The clerks shall take an oath for the faithful discharge of their duties, and shall be under the direction of the court in the performance thereof ; and for misconduct or incapacity they may be removed by it from office ; but the court shall report such removals, with the cause thereof, to Congress, if in session, or if not, at the next session. The bailiff shall hold his office for a term of four years, unless sooner removed by the court for cause.

Revised Statutes (Second Edition), § 1053, p. 194 ; Act of Congress of 24th February, 1855, ch. 122, sec. 11, 10 Stat. at Large, 614 ; Act of Congress of 3d March, 1863, ch. 92, sec. 4, 12 Stat. at Large, 765.

SEC. 1054. The salary of the chief clerk shall be three thousand dollars a year, of the assistant clerk two thousand dollars a year, of the bailiff fifteen hundred dollars a year, and of the messenger eight hundred and forty dollars a year, payable quarterly from the Treasury.

Revised Statutes (Second Edition), § 1054, p. 194 ; Act of Congress of 24th February, 1855, ch. 122, sec. 11, 10 Stat. at Large, 614 ; Act of Congress of 3d March, 1863, ch. 92, sec. 4, 12 Stat. at Large, 765 ; Act of Congress of 7th June, 1870, ch. 124, 16 Stat. at Large, 148 ; Act of Congress of 12th July, 1870, ch. 251, sec. 3, 16 Stat. at Large, 250 ; Act of Congress of 8th May, 1872, ch. 140, sec. 1, 17 Stat. at Large, 82.

SEC. 1055. The chief clerk shall give bond to the United States in such amount, in such form, and with such security as shall be approved by the Secretary of the Treasury.

Revised Statutes (Second Edition), § 1055, p. 195 ; Act of Congress of 6th August, 1856, ch. 81, sec. 3, 11 Stat. at Large, 30.

SEC. 1056. The said clerk shall have authority, when he has given bond as provided in the preceding section, to disburse, under the direction of the court, the contingent fund which may from time to time be appropriated for its use; and his accounts shall be settled by the proper accounting officers of the Treasury in the same way as the accounts of other disbursing agents of the Government are settled.

Revised Statutes (Second Edition), § 1056, p. 195; Act of Congress of 6th August, 1856, ch. 81, sec. 3, 11 Stat. at Large, 30.

SEC. 1057. On the first day of every December session of Congress, the clerk of the Court of Claims shall transmit to Congress a full and complete statement of all the judgments rendered by the court during the previous year, stating the amounts thereof and the parties in whose favor they were rendered, together with a brief synopsis of the nature of the claims upon which they were rendered. And at the end of every term of the court he shall transmit a copy of its decisions to the heads of Departments; to the Solicitor, the Comptrollers, and the Auditors of the Treasury; to the Commissioners of the General Land-Office and of Indian Affairs; to the chiefs of bureaus, and to other officers charged with the adjustment of claims against the United States.

Revised Statutes (Second Edition), § 1057, p. 195; Act of Congress of 17th March, 1866, ch. 19, sec. 3, 14 Stat. at Large, 9; Act of Congress of 25th June, 1868, ch. 71, sec. 9, 15 Stat. at Large, 77.

SEC. 1058. Members of either House of Congress shall not practise in the Court of Claims.

Revised Statutes (Second Edition), § 1058, p. 195; Act of Congress of 3d March, 1863, ch. 92, sec. 4, 12 Stat. at Large, 765.

SEC. 1059. The Court of Claims shall have jurisdiction to hear and determine the following matters:

First. All claims founded upon any law of Congress, or upon any regulation of an Executive Department, or upon any contract, expressed or implied, with the Government of the United States, and all claims which may be referred to it by either House of Congress.

Second. All set-offs, counter-claims, claims for damages, whether liquidated or unliquidated, or other demands whatso-

ever, on the part of the Government of the United States against any person making claim against the Government in said court.

Third. The claim of any paymaster, quartermaster, commissary of subsistence, or other disbursing officer of the United States, or of his administrators or executors, for relief from responsibility on account of capture or otherwise, while in the line of his duty, of Government funds, vouchers, records, or papers in his charge, and for which such officer was and is held responsible.

Fourth. Of all claims for the proceeds of captured or abandoned property, as provided by the act of March 12, eighteen hundred and sixty-three, chapter one hundred and twenty, entitled "An act to provide for the collection of abandoned property and for the prevention of frauds in insurrectionary districts within the United States," or by the act of July two, eighteen hundred and sixty four, chapter two hundred and twenty-five, being an act in addition thereto :

Provided, That the remedy given in cases of seizure under the said acts, by preferring claim in the Court of Claims, shall be exclusive, precluding the owner of any property taken by agents of the Treasury Department as abandoned or captured property in virtue or under color of said acts from suit at common law, or any other mode of redress whatever, before any court other than said Court of Claims :

[*Provided, also*, That the jurisdiction of the Court of Claims shall not extend to any claim against the United States growing out of the destruction or appropriation of, or damage to, property by the Army or Navy engaged in the suppression of the rebellion.]

Revised Statutes (Second Edition), § 1059, pp. 195, 196.

See also the following Acts of Congress under the following paragraphs of the foregoing section respectively :

First. Act of Congress of 24th February, 1855, ch. 122, sec. 1, 10 Stat. at Large, 612; Act of Congress of 22d June, 1874, ch. 393, sec. 2, 18 Stat. at Large, 192; Act of Congress of 3d March, 1875, ch. 149, 18 Stat. at Large, 481.

Second. Act of Congress of 3d March, 1863, ch. 92, sec. 3, 12 Stat. at Large, 765.

Third. Act of Congress of 9th May, 1866, ch. 75, sec. 1, 14 Stat. at Large, 44.

Fourth. Act of Congress of 12th March, 1863, ch. 120, sec. 3, 12 Stat. at Large, 820; Act of Congress of 2d July, 1864, ch. 225, sec. 2, 3, 13, Stat. at Large, pp. 375, 376; Act of Congress of 27th July, 1868, ch. 276, sec. 3, 15 Stat. at Large, 243; Act of Congress of 18th February, 1875, ch. 80, 18 Stat. at Large, 318.

See also the following Acts of Congress and Joint Resolutions applicable to this section, and relating to the jurisdiction of the Court of Claims, and which are not incorporated in the Second Edition of the Revised Statutes:

Act of Congress of 4th July, 1864, ch. 240, 13 Stat. at Large, 381; Joint Resolution of Congress of 18th June, 1866, No. 50, 14 Stat. at Large, 360; Act of Congress of 19th February, 1867, ch. 57, 14 Stat. at Large, 397; Joint Resolution of Congress of 23d December, 1869, No. 5, 16 Stat. at Large, 368; Joint Resolution of Congress of 3d March, 1871, No. 50, 16 Stat. at Large, 600; Act of Congress of 3d March, 1875, ch. 133, par. 2, sec. 1, 18 Stat. at Large, 452; Act of Congress of 19th June, 1878, ch. 319, 20 Stat. at Large, 171; Act of Congress of 1st March, 1879, ch. 115, 20 Stat. at Large, 324; Act of Congress of 16th June, 1880, ch. 243, 21 Stat. at Large, 284; Act of Congress of 3d March, 1883, ch. 116, 22 Stat. at Large, 485.

For the convenience of the profession the following Acts and Joint Resolutions of Congress which are referred to above under § 1059 of the Revised Statutes are quoted in full:

ACT OF JULY 4TH, 1864.

Be it enacted, etc., That the jurisdiction of the Court of Claims shall not extend to, or include any claim against the United States growing out of the destruction or appropriation of, or damage to, property by the Army or Navy, or any part of the Army or Navy, engaged in the suppression of the rebellion, from the commencement to the close thereof.

SEC. 2. That all claims of loyal citizens in States not in rebellion, for quartermasters' stores actually furnished to the Army of the United States, and receipted for by the proper officer receiving the same, or which may have been taken by such officers without giving such receipt, may be submitted to the Quartermaster-General of the United States, accompanied with such proofs as each claimant can present of the facts in his case; and it shall be the duty of the Quartermaster-General to cause such claim to be examined, and, if convinced that it is just, and of the loyalty of the claimant, and that the stores have been actually received or taken for the use of and used by said Army, then to report each case to the Third Auditor of the Treasury, with a recommendation for settlement.

SEC. 3. That all claims of loyal citizens in States not in rebellion, for subsistence actually furnished to said Army, and receipted for by the proper officer receiving the same, or which may have been taken by such officers without giving such receipt, may be submitted to the Commissary-General of Subsistence, accompanied with such proofs as each claimant may have to offer; and it shall be the duty of the Commissary-General of Subsistence to cause each claim to be examined, and, if convinced that it is just, and of the loyalty of the claimant, and that the stores have been actually received or taken for the use of, and used by said Army, then to report each case for payment to the Third Auditor of the Treasury with a recommendation for settlement.

Act of Congress of July 4th, 1864, ch. 240, 13 Stat. at Large, 381.

JOINT RESOLUTION OF JUNE 18TH, 1866.

Be it resolved, &c., That the provisions of the act of Congress of July fourth, eighteen hundred and sixty-four, entitled "An act to restrict the jurisdiction of the Court of Claims, and for other purposes," be, and the same are hereby, construed to extend to the counties of Berkeley and Jefferson, of the State of West Virginia.

Joint Resolution of Congress of 18th June, 1866, No. 50, 14 Stat. at Large, 360.

ACT OF FEBRUARY 19TH, 1867.

Be it enacted, &c., That the provisions of chapter two hundred and forty of the acts of the Thirty-eighth Congress, first session, approved July fourth, eighteen hundred and sixty-four, shall not be construed to authorize the settlement of any claim for supplies or stores taken or furnished for the use of, or used by, the armies of the United States, nor for the occupation of, or injury to, real estate, nor for the consumption, appropriation, or destruction of, or damage to, personal property, by the military authorities or troops of the United States, where such claim originated during the war for the suppression of the Southern rebellion, in a State, or part of a State, declared in insurrection by the proclamation of the President of the United States, dated July first, eighteen hundred and sixty-two, or in a State which by an ordinance of secession attempted to withdraw from the United States Government:

Provided, That nothing herein contained shall repeal or modify the effect of any act or joint resolution extending the provisions of the said act of July fourth, eighteen hundred and sixty-four, to the loyal citizens of the State of Tennessee, or of the State of West Virginia, or any county therein.

Act of Congress of 19th February, 1867, ch. 57, 14 Stat. at Large, 397.

ACT OF JULY 27TH, 1868.

Be it enacted, &c., That all the provisions of section eight of the act of

July twenty-eight, eighteen hundred and sixty-six, entitled, "An act to protect the revenue, and for other purposes," (a) and the forms and modes by that section and the twelfth section of the act of March three, eighteen hundred and sixty-three, (b) therein referred to, prescribed for prosecuting suits, withholding executions, and paying judgments against officers of the United States, or other persons engaged in executing the acts relative to captured and abandoned property, shall extend and be applied to all suits and proceedings (except those in behalf of the United States) which have been brought, or may hereafter be brought, against any officer or agent of the Government, civil or military, for acts done during the rebellion while acting by virtue or under color of his office or employment; and every defendant in such suit or proceeding having made full defence thereto, and having notified the Attorney-General of the United States to appear and defend the same, shall be entitled to the full benefit and protection provided in said section for officers and agents of the Government engaged in the collection of the public revenue; and any defendant being aggrieved by any order or direction, certificate, ruling, or judgment of any court made or had in any such proceeding, may except thereto and appeal therefrom to the Supreme Court of the United States, and have the questions arising there heard and determined.

SEC. 2. That no action or suit shall be maintained in any court of the United States, or of any State thereof, in the name or in the behalf or interest of any alien, against the United States, or any person, for or on account of any act done or omitted to be done by such person as an officer or agent of the United States, in the administration of the act of Congress entitled "An act to provide for the collection of abandoned property and for the prevention of frauds in insurrectionary districts within the United States," approved March twelve, eighteen hundred and sixty-three, or of the act of Congress entitled "An act in addition to the several acts concerning commercial intercourse between loyal and insurrectionary States, and to provide for the collection of captured and abandoned property, and the prevention of fraud in States declared in insurrection," approved July two, eighteen hundred and sixty-four, or in virtue or under color of the acts of Congress aforesaid, or any other acts of Congress relative to the said insurrectionary States, or to persons or property therein; and to any action or suit which may have been heretofore, or shall hereafter be, instituted by any alien against the United States, or any such person as aforesaid, on account of any act done or omitted to be done, as aforesaid, the defendant may and shall plead or allege in bar thereof, that such act was done, or omitted to be done, in the administration of one of the acts of Congress aforesaid, or in virtue or under color thereof, and such plea or allegation, if the fact be sustained

(a) The provisions of the act here referred to may be found in Revised Statutes, § 629, par. 12, §§ 643, 645, 646, 934.

(b) The section here referred to is incorporated in Revised Statutes, § 989.

by the proof, shall be, and shall be deemed and adjudged in law to be, a complete and conclusive bar to any such suit or action :

Provided, That this section shall not be construed so as to deprive aliens who are citizens or subjects of any government which accords to citizens of the United States the right to prosecute claims against such Government in its courts, of the privilege of prosecuting claims against the United States in the Court of Claims, as now provided by law.

SEC. 3. That it is hereby declared to have been the true intent and meaning of the act approved March twelve, eighteen hundred and sixty-three, entitled "An act to provide for the collection of abandoned property and for the prevention of frauds in insurrectionary districts within the United States," that the remedy given in cases of seizure made under said act, by preferring claim in the Court of Claims, should be exclusive, precluding the owner of any property taken by the agents of the Treasury Department as abandoned or captured property in virtue or under color of said act from suit at common law, or any other mode of redress whatever, before any court or tribunal other than said Court of Claims;

And in all cases in which suits of trespass, replevin, detinue, or any other form of action may have been brought and are now pending, or shall hereafter be brought against any person for or on account of private property taken by such person as an officer or agent of the United States, in virtue or under color of the act aforesaid, or the act approved July second, eighteen hundred and sixty-four, entitled "An act in addition to the several acts concerning commercial intercourse between loyal and insurrectionary States, and to provide for the collection of captured and abandoned property, and the prevention of frauds in States declared in insurrection," the defendant may and shall plead or allege in bar thereof that such act was done or omitted to be done by him as an officer or agent of the United States in the administration of one of the acts of Congress aforesaid, or in virtue or under color thereof, and such plea or allegation, if the fact be sustained by the proof, shall be, and shall be deemed and adjudged in law to be, a complete and conclusive bar to any such suit or action :

Provided, however, That no judgment, recovered in accordance with this act, shall be paid by the United States, unless the amount received by the defendant as the proceeds of the transaction which was the foundation of the suit shall have been paid into the Treasury, except upon an appropriation duly made therefor after a full examination of the claim upon its merits.

Act of Congress of 27th July 1868, ch. 276, 15 Stat. at Large, 243.

JOINT RESOLUTIONS OF DECEMBER 23D, 1869, AND OF MARCH 3D, 1871.

Be it resolved, &c., That the act of February nineteenth, eighteen hundred and sixty-seven, entitled "An act to declare the sense of an act entitled 'An act to restrict the jurisdiction of the Court of Claims,'" and so forth, and so forth, shall not apply to nor be construed to debar the

settlement of claims for steamboats or other vessels taken without consent of the owner, or impressed into the military service of the United States, during the late war, in States or parts of States declared in insurrection :

Provided, That the claimants were loyal at the time their claims originated, and remained loyal thereafter, and were residents of loyal States, and such steamboats or other vessels were in the insurrectionary districts by proper authority, viz.: charter, contract, impressment, or in conformity with rules or regulations established by the Secretary of the Treasury and approved by the President of the United States, or in conformity with the laws of the United States.

Joint Resolution of Congress of 23d December, 1869, No. 5, 16 Stat. at Large, 368, as amended by Joint Resolution of Congress of 3d March, 1871, No. 50, 16 Stat. at Large, 600.

ACT OF JUNE 16TH, 1880, DISTRICT CLAIMS ACT.

[SECTION 1.] That the jurisdiction of the Court of Claims is hereby extended to, and it shall have original legal and equitable jurisdiction of,

All claims now existing against the District of Columbia arising out of contracts made by the late Board of Public Works, and extensions thereof made by the Commissioners of the District of Columbia,

And such claims as have arisen out of contracts made by the District Commissioners since the passage of the act of June twentieth, eighteen hundred and seventy-four,

And of all claims for work done by the order or direction of the said Commissioners, and accepted by them for the use, purposes or benefit of the said District of Columbia, and prior to the fourteenth day of March, eighteen hundred and seventy-six ;

And all certificates of the auditor of said Board of Public Works,

All certificates issued by the auditor and comptroller of the District of Columbia,

All claims based on contracts made by the Levy Court,

All sewer certificates, all sewer taxes not heretofore converted into three-sixty-five bonds,

All measurements made by the engineers of said District of work done under contracts made since February twenty-first, eighteen hundred and seventy-one, for which no certificates have been issued to and received by the contractor or his assignee which certificates shall be prima facie evidence of the amount of work done,

All claims based upon contracts made by the Board of Public Works for which no evidence of indebtedness has been issued.

Said Court of Claims shall have the same power, proceed in the same manner, and be governed by the same rules, in respect to the mode of hearing, adjudication, and determination of said claims, as it now has in relation to the adjudication of claims against the United States :

Provided, Said court may make such additional rules as may be necessary to save costs and prevent delays in the prosecution of such claims.

When the trial of any claim against the District of Columbia, prosecuted under the provisions of this act, involves the taking and stating of a long account, or the making of measurements or computations involving the services of engineers, said court shall have power to award a reference to a competent referee to take and state such account, or to the engineer commissioner of the District to make and report such measurements and computations ;

And said referee or engineer shall report to the court the evidence taken by him for the information of said court, and any such referee shall be allowed such compensation for his services as the court may determine, not exceeding ten dollars per day for time actually employed, to be paid on the order of the court by the Secretary of the Treasury and charged to the account of the District of Columbia.

SEC. 2. All such claims against the District of Columbia shall, in the first instance, be prosecuted before the Court of Claims by the contractor, his personal representatives or his assignee, in the same manner and subject to the same rules, so far as applicable, as claims against the United States are prosecuted therein, or to such other rules as the court shall prescribe.

In any case if before trial either party requests in writing a finding of facts by the court, there shall be the same right of appeal, either by the District of Columbia or by the claimant, and subject to the same rules and regulations, as are prescribed by law for appeals on behalf of the United States or claimants against the United States from the judgments of the Court of Claims :

Provided, That the prosecution of all such claims shall be commenced in the Court of Claims by the filing of the petition of the claimant, as required by the rules and practice of said court, within six months from the passage of this act ; and all such claims against the District of Columbia now existing, and not so filed within said time, shall be forever barred, except in cases of claims owned and held by persons under legal disabilities, in which case such claims shall be in like manner barred unless commenced as aforesaid within six months after the expiration of such disability .

Provided, That all certificates, measurements, or other evidence of indebtedness, in the custody of the Commissioners of the District of Columbia, shall be deposited with the Court of Claims, upon the application of any claimant.

When the validity of a number of claims depends substantially upon a like state of facts, they may be brought before the court in one petition in which all parties are joined, and may be tried together under such rules as the court may prescribe, and such judgments may be entered therein as the court may determine ; and cases of like kind may be consolidated and tried together whenever the court so orders.

SEC. 3. The Attorney-General of the United States shall have authority, and it shall be his duty, to defend the District of Columbia against

all such claims against said District of Columbia prosecuted in said Court of Claims, and on appeal, in like manner as he is now by law required to defend the United States in said court, with the same power to interpose counter claims and offsets against claims and defences for fraud practised or attempted and all other legal defences, and with like power of appeal as in cases against the United States tried in said court.

SEC. 4. All laws now in force relating to prosecutions of claims against the United States in the Court of Claims shall apply, as far as applicable, to the prosecution, practice, hearing, and determination of claims against the District of Columbia authorized to be prosecuted under the provisions of this act:

Provided, That motions for new trials shall be made by either party within twenty days after the rendition of any judgment:

And provided further, That in the trial of such cases no person shall be excluded as a witness because he or she is a party to or interested in the same.

SEC. 5. If no appeal be taken from the judgment and determination of the Court of Claims in cases provided for in this act within the term limited by law for appealing from the judgments of said court, and in all cases of final judgments by the Court of Claims, or on appeal by the Supreme Court where the same are affirmed in favor of the claimant, the sum due thereby shall be paid, as hereinafter provided, by the Secretary of the Treasury:

Provided, That no payment shall be made except upon the presentation to the Secretary of the Treasury of a copy of said judgment certified by the clerk of the Court of Claims, and signed by the chief justice, or, in his absence, by the presiding judge of said court. .

SEC. 6. The Secretary of the Treasury is hereby authorized to demand of the sinking-fund commissioner of the District of Columbia so many of the three-sixty-five bonds authorized by act of Congress approved June twentieth, eighteen hundred and seventy-four, and acts amendatory thereof, as may be necessary for the payment of the judgments; and said sinking-fund commissioner is hereby directed to issue and deliver to the Secretary of the Treasury the amount of three-sixty-five bonds required to satisfy the judgments; which bonds shall be received by said claimants at par in payment of such judgments, and shall bear date August first, eighteen hundred and seventy-four, and mature at the same time as other bonds of this issue:

Provided, That before the delivery of such bonds as are issued in payment of judgments rendered as aforesaid on the claims aforesaid, the coupons shall be detached therefrom from the date of said bonds to the day upon which such claims were due and payable; and the gross amount of such bonds heretofore and hereafter issued shall not exceed in the aggregate fifteen millions of dollars:

Provided, The bonds issued by authority of this act shall be of no more binding force as to their payment on the Government of the United States

than the three-sixty-five bonds issued under authority of the act of June twentieth, eighteen hundred and seventy-four.

SEC. 7. In all cases prosecuted under the provisions of this act it shall be the duty of the claimant, after the commencement of said actions, to prosecute them in said court diligently;

And after any issue of law or of fact shall be joined in any case, the Attorney-General shall have power to place the same on the trial calendar of said court for trial;

And in all cases when any case has been reached in its order on the calendar, and the trial thereof has been unreasonably delayed by the claimant, the said court may, on motion of the Attorney-General, on notice to the claimant, or his counsel, attorney, or solicitor, dismiss said claim; and such dismissal or final judgment on any claim shall be a conclusive bar against any further prosecution of such claim before any court or tribunal whatsoever.

The Secretary of the Treasury shall pay, according to the provisions of this act, the said judgments from time to time as they may be presented.

SEC. 8. No claim shall be presented to, or considered by the Court of Claims under the provisions of this act which was rejected by the Board of Audit.

SEC. 9. That the Treasurer of the United States as ex-officio sinking-fund commissioner of the District of Columbia is hereby authorized and directed to redeem the outstanding certificates of the late Board of Audit, created by the act approved June twentieth, eighteen hundred and seventy-four, with the interest accrued on said certificates by issuing and delivering to the owners or holders of such certificates, bonds of the District of Columbia as provided in section seven of the act approved June twentieth, eighteen hundred and seventy-four, entitled, "An act for the government of the District of Columbia, and for other purposes," and acts amendatory thereof, said bonds to bear the same date, same rate of interest, and interest and principal be payable at same time, and subject to all the conditions, pledges of faith, and exemptions as the bonds authorized to be issued by the said seventh section of said act, and shall be signed by the said treasurer as ex-officio sinking-fund commissioner of the District of Columbia, and numbered, countersigned, sealed and registered as the said seventh section of said act prescribes, detaching all coupons from said bonds up to the date of such certificates.

SEC. 10. No suit now pending for the collection of any claim based upon a contract or extension of contract hereinbefore mentioned, in the Supreme Court of the District of Columbia, shall be in any manner prejudiced by the provisions of this act.

Act of Congress of 16th June, 1880, ch. 243, 21 Stat. at Large, 287, known as the "District Claims Act."

ACT OF MARCH 3D, 1883. BOWMAN ACT.

Be it enacted, &c. [Section 1], That whenever a claim or matter is pend-

ing before any committee of the Senate or House of Representatives, or before either House of Congress, which involves the investigation and determination of facts, the committee or house may cause the same, with the vouchers, papers, proofs, and documents pertaining thereto, to be transmitted to the Court of Claims of the United States, and the same shall there be proceeded in under such rules as the court may adopt.

When the facts shall have been found, the court shall not enter judgment thereon, but shall report the same to the committee or to the house by which the case was transmitted for its consideration.

SEC. 2. That when a claim or matter is pending in any of the Executive Departments which may involve controverted questions of fact or law, the head of such Department may transmit the same, with the vouchers, papers, proofs, and documents pertaining thereto, to said court, and the same shall be there proceeded in under such rules as the court may adopt.

When the facts and conclusions of law shall have been found, the court shall not enter judgment thereon, but shall report its findings and opinions to the Department by which it was transmitted for its guidance and action.

SEC. 3. The jurisdiction of said court shall not extend to or include any claim against the United States growing out of the destruction or damage to property by the Army or Navy during the war for the suppression of the rebellion, or for the use and occupation of real estate by any part of the military or naval forces of the United States in the operations of said forces during the said war at the seat of war ;

Nor shall the said court have jurisdiction of any claim against the United States which is now barred by virtue of the provisions of any law of the United States.

SEC. 4. In any case of a claim for supplies or stores taken by or furnished to any part of the military or naval forces of the United States for their use during the late war for the suppression of the rebellion, the petition shall aver that the person who furnished such supplies or stores, or from whom such supplies or stores were taken, did not give any aid or comfort to said rebellion, but was throughout that war loyal to the Government of the United States, and the fact of such loyalty shall be a jurisdictional fact ;

And unless the said court shall, on a preliminary inquiry, find that the person who furnished such supplies or stores, or from whom the same were taken as aforesaid, was loyal to the Government of the United States throughout said war, the court shall not have jurisdiction of such cause, and the same shall, without further proceedings, be dismissed.

SEC. 5. That the Attorney-General, or his assistants, under his direction, shall appear for the defence and protection of the interests of the United States in all cases which may be transmitted to the Court of Claims under this act, with the same power to interpose counter-claims, off-sets, defences for fraud practised or attempted to be practised by claimants, and

other defences, in like manner as he is now required to defend the United States in said court.

SEC. 6. That in the trial of such cases no person shall be excluded as a witness because he or she is a party to or interested in the same.

SEC. 7. That reports of the Court of Claims to Congress under this act, if not finally acted upon during the session at which they are reported, shall be continued from session to session and from Congress to Congress until the same shall be finally acted upon.

Act of Congress of 3d March, 1883, ch. 116, 22 Stat. at Large, 485, known as "The Bowman Act."

NOTE.—In the edition of the Rules of the Court of Claims with the Statutes applicable to the Court issued at Washington from the Government Printing Office in 1884, the following note is appended to this Act.

"This act does not repeal Revised Statutes, section 1063, which authorizes the head of a Department to transmit to the Court of Claims any cases of the class of which, by reason of the subject-matter and character, the court might take jurisdiction of on the voluntary action of claimants, and which are set forth in Revised Statutes, section 1059.

"Nor does it repeal that provision in section 1059 of the Revised Statutes which gives the court jurisdiction to hear and determine 'all claims which may be referred by either house of Congress.'

"In all the above-mentioned cases the court has jurisdiction to enter judgment.

"Care must therefore be taken in referring to the court cases which might come under either the Revised Statutes, or the act of March 3d, 1883, to specify under which law the reference is made."

SEC. 1060. All petitions and bills praying or providing for the satisfaction of private claims against the Government, founded upon any law of Congress, or upon any regulation of an Executive Department, or upon any contract, expressed or implied, with the Government of the United States, shall, unless otherwise ordered by resolution of the House in which they are introduced, be transmitted by the Secretary of the Senate or the Clerk of the House of Representatives, with all the accompanying documents, to the Court of Claims.

Revised Statutes (Second Edition), § 1060, p. 196 ; Act of Congress of 3d March, 1863, ch. 92, sec. 2, 12 Stat at Large, 765.

SEC. 1061. Upon the trial of any cause in which any set-off, counter-claim, claim for damages, or other demand is set up on the part of the Government against any person making claim against the Government in said court, the court shall hear and

determine such claim or demand both for and against the Government and claimant; and if upon the whole case it finds that the claimant is indebted to the Government, it shall render judgment to that effect, and such judgment shall be final, with the right of appeal, as in other cases provided for by law.

Any transcript of such judgment, filed in the clerk's office of any district or circuit court, shall be entered on the records thereof, and shall thereby become and be a judgment of such court and be enforced as other judgments in such courts are enforced.

Revised Statutes (Second Edition), § 1061, p. 196 ; Act of Congress of 3d March, 1863, ch. 92, sec. 3, 12 Stat. at Large, 765.

SEC. 1062. Whenever the Court of Claims ascertains the facts of any loss by any paymaster, quartermaster, commissary of subsistence, or other disbursing officer, in the cases hereinbefore provided, to have been without fault or negligence on the part of such officer, it shall make a decree setting forth the amount thereof, and upon such decree the proper accounting officers of the Treasury shall allow to such officer the amount so decreed, as a credit in the settlement of his accounts.

Revised Statutes (Second Edition), § 1062, p. 196 ; Act of Congress of 9th May, 1866, ch. 75, sec. 2, 14 Stat. at Large, 44.

SEC. 1063. Whenever any claim is made against any Executive Department, involving disputed facts or controverted questions of law, where the amount in controversy exceeds three thousand dollars, or where the decision will affect a class of cases, or furnish a precedent for the future action of any Executive Department in the adjustment of a class of cases, without regard to the amount involved in the particular case, or where any authority, right, privilege, or exemption is claimed or denied under the Constitution of the United States, the head of such Department may cause such claim, with all the vouchers, papers, proofs, and documents pertaining thereto, to be transmitted to the Court of Claims, and the same shall be there proceeded in as if originally commenced by the voluntary action of the claimant; and the Secretary of the Treasury may, upon the certificate of any Auditor or Comptroller of the Treasury, direct any account, matter, or claim, of the character, amount,

or class described in this section, to be transmitted, with all the vouchers, papers, documents, and proofs pertaining thereto, to the said court, for trial and adjudication :

Provided, That no case shall be referred by any head of a Department unless it belongs to one of the several classes of cases which, by reason of the subject-matter and character, the said court might, under existing laws, take jurisdiction of on such voluntary action of the claimant.

Revised Statutes (Second Edition), § 1063, pp. 196, 197 ; Act of Congress of 25th June, 1868, ch. 71, sec. 7, 15 Stat. at Large, 76 ; Act of Congress of 16th June, 1874, ch. 285, 18 Stat. at Large, 75.

SEC. 1064. All cases transmitted by the head of any Department, or upon the certificate of any Auditor or Comptroller, according to the provisions of the preceding section, shall be proceeded in as other cases pending in the Court of Claims, and shall, in all respects, be subject to the same rules and regulations.

Revised Statutes (Second Edition), § 1064, p. 197 ; Act of Congress of 25th June, 1868, ch. 71, sec. 7, 15 Stat. at Large, 76.

SEC. 1065. The amount of any final judgment or decree rendered in favor of the claimant, in any case transmitted to the Court of Claims under the two preceding sections, shall be paid out of any specific appropriation applicable to the case, if any such there be ; and where no such appropriation exists, the judgment or decree shall be paid in the same manner as other judgments of the said court.

Revised Statutes (Second Edition), § 1065, p. 197 ; Act of Congress of 25th June, 1868, ch. 71, sec. 7, 15 Stat. at Large, 76 ; Act of Congress of 3d March, 1875, ch. 149, 18 Stat. at Large, 481.

SEC. 1066. The jurisdiction of the said court shall not extend to any claim against the Government not pending therein on December one, eighteen hundred and sixty-two, growing out of or dependent on any treaty stipulation entered into with foreign nations or with the Indian tribes.

Revised Statutes (Second Edition), § 1066, p. 197 ; Act of Congress of 3d March, 1863, ch. 92, sec. 9, 12 Stat. at Large, 767.

SEC. 1067. No person shall file or prosecute in the Court of

Claims, or in the Supreme Court on appeal therefrom, any claim for or in respect to which he or any assignee of his has pending in any other court any suit or process against any person who, at the time when the cause of action alleged in such suit or process arose, was, in respect thereto, acting or professing to act, mediately or immediately, under the authority of the United States.

Revised Statutes (Second Edition), § 1067, p. 197 ; Act of Congress of 25th June, 1868, ch. 71, sec. 8, 15 Stat. at Large, 77.

SEC. 1068. Aliens, who are citizens or subjects of any government which accords to citizens of the United States the right to prosecute claims against such Government in its courts, shall have the privilege of prosecuting claims against the United States in the Court of Claims, whereof such court, by reason of their subject-matter and character, might take jurisdiction.

Revised Statutes (Second Edition), § 1068, p. 197 ; Act of Congress of 27th July, 1868, ch. 276, sec. 2, 15 Stat. at Large, 243.

SEC. 1069. Every claim against the United States, cognizable by the Court of Claims, shall be forever barred unless the petition setting forth a statement thereof is filed in the court, or transmitted to it by the Secretary of the Senate or the Clerk of the House of Representatives as provided by law, within six years after the claim first accrues :

Provided, That the claims of married women first accrued during marriage, of persons under the age of twenty-one years first accrued during minority, and of idiots, lunatics, insane persons, and persons beyond the seas at the time the claim accrued, entitled to the claim, shall not be barred if the petition be filed in the court or transmitted, as aforesaid, within three years after the disability has ceased ; but no other disability than those enumerated shall prevent any claim from being barred, nor shall any of the said disabilities operate cumulatively.

Revised Statutes (Second Edition), § 1069, pp. 197, 198 ; Act of Congress of 3d March, 1863, ch. 92, sec. 10, 12 Stat. at Large, 767.

SEC. 1070. The said court shall have power to establish rules for its government and for the regulation of practice therein, and it may punish for contempt in the manner prescribed by

the common law, may appoint commissioners, and may exercise such powers as are necessary to carry into effect the powers granted to it by law.

Revised Statutes (Second Edition), § 1070, p. 198 ; Act of Congress of 24th February, 1855, ch. 122, sec. 3, 10 Stat. at Large, 613 ; Act of Congress of 3d March, 1863, ch. 92, sec. 4, 12 Stat. at Large, 765.

SEC. 1071. The judges and clerks of said court may administer oaths and affirmations, take acknowledgments of instruments in writing, and give certificates of the same.

Revised Statutes (Second Edition), § 1071, p. 198 ; Act of Congress of 3d March, 1863, ch. 92, sec. 4, 12 Stat. at Large, 765.

SEC. 1072. The claimant shall, in all cases, fully set forth in his petition the claim, .

The action thereon in Congress, or by any of the Departments, if such action has been had ;

What persons are owners thereof or interested therein,

When and upon what consideration such persons became so interested ;

That no assignment or transfer of said claim, or of any part thereof or interest therein, has been made, except as stated in the petition ;

That said claimant is justly entitled to the amount therein claimed from the United States, after allowing all just credits and off-sets ;

That the claimant, and, where the claim has been assigned, the original and every prior owner thereof, if a citizen, has at all times borne true allegiance to the Government of the United States, and, whether a citizen or not, has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, and that he believes the facts as stated in the said petition to be true.

And the said petition shall be verified by the affidavit of the claimant, his agent, or attorney.

Revised Statutes (Second Edition), § 1072, p. 198 ; Act of Congress of 24th February, 1855, ch. 122, sec. 1, 10 Stat. at Large, 612 ; Act of Congress of 3d March, 1863, ch. 92, sec. 12, 12 Stat. at Large, 767.

SEC. 1073. The said allegations as to true allegiance and voluntary aiding, abetting, or giving encouragement to rebellion

against the Government may be traversed by the Government, and if on the trial such issues shall be decided against the claimant, his petition shall be dismissed.

Revised Statutes (Second Edition), § 1073, p. 198 ; Act of Congress of 3d March, 1863, ch. 92, sec. 12, 12 Stat. at Large, 767.

SEC. 1074. Whenever it is material in any claim to ascertain whether any person did or did not give any aid or comfort to the late rebellion, the claimant asserting the loyalty of any such person to the United States during such rebellion shall be required to prove affirmatively that such person did, during said rebellion, consistently adhere to the United States, and did give no aid or comfort to persons engaged in said rebellion ; and the voluntary residence of any such person in any place where, at any time during such residence, the rebel force or organization held sway, shall be prima-facie evidence that such person did give aid and comfort to said rebellion and to the persons engaged therein.

Revised Statutes (Second Edition), § 1074, p. 198 ; Act of Congress of 25th June, 1868, ch. 71, sec. 3, 15 Stat. at Large, 75.

SEC. 1075. The Court of Claims shall have power to appoint commissioners to take testimony to be used in the investigation of claims which come before it ; to prescribe the fees which they shall receive for their services, and to issue commissions for the taking of such testimony, whether taken at the instance of the claimant or of the United States.

Revised Statutes (Second Edition), § 1075, p. 198 ; Act of Congress of 24th February, 1855, ch. 122, sec. 3, 10 Stat. at Large, 613 ; Act of Congress of 3d March, 1863, ch. 92, sec. 4, 12 Stat. at Large, 765.

SEC. 1076. The said court shall have power to call upon any of the Departments for any information or papers it may deem necessary, and shall have the use of all recorded and printed reports made by the committees of each House of Congress, when deemed necessary in the prosecution of its business. But the head of any Department may refuse and omit to comply with any call for information or papers when, in his opinion, such compliance would be injurious to the public interest.

Revised Statutes (Second Edition), § 1076, p. 198 ; Act of Congress of 24th February, 1855, ch. 122, sec. 11, 10 Stat. at Large, 614.

SEC. 1077. When it appears to the court in any case that the facts set forth in the petition of the claimant do not furnish any ground for relief, it shall not be the duty of the court to authorize the taking of any testimony therein.

Revised Statutes (Second Edition), § 1077, p. 198; Act of Congress of 24th February, 1855, ch. 122, sec. 4, 10 Stat. at Large, 613.

SEC. 1078. No witness shall be excluded in any suit in the Court of Claims on account of color.

Revised Statutes (Second Edition), § 1078, p. 199; Act of Congress of 2d July, 1864, ch. 210, sec. 3, 13 Stat. at Large, 351; Act of Congress of 2d March, 1867, ch. 166, sec. 2, 14 Stat. at Large, 457; Act of Congress of 25th June, 1868, ch. 71, sec. 4, 15 Stat. at Large, 75.

SEC. 1079. No claimant, nor any person from or through whom any such claimant derives his alleged title, claim, or right against the United States, nor any person interested in any such title, claim, or right, shall be a competent witness in the Court of Claims in supporting the same, and no testimony given by such claimant or person shall be used except as provided in the next section.

Revised Statutes (Second Edition), § 1079, p. 199; Act of Congress of 3d March, 1863, ch. 92, sec. 8, 12 Stat. at Large, 766; Act of Congress of 25th June, 1868, ch. 71, sec. 4, 15 Stat. at Large, 75.

By an Act of Congress of 16th June, 1880, ch. 243, 21 Stat. at Large, 284, entitled:

“An Act to provide for the settlement of all outstanding claims against the District of Columbia, and conferring jurisdiction on the Court of Claims to hear the same, and for other purposes,”
it was provided as follows:

“Sec. 4. All laws now in force relating to prosecutions of Claims against the United States in the Court of Claims shall apply, as far as applicable, to the prosecution, practice, hearing, and determination of claims against the District of Columbia authorized to be prosecuted under the provisions of this act:

“*Provided*, That motions for new trials shall be made by either party within twenty days after the rendition of any judgment:

“*And provided further*, That in the trial of such cases no person shall be excluded as a witness because he or she is a party to or interested in the same.”

SEC. 1080. The court may, at the instance of the attorney or solicitor appearing in behalf of the United States, make an

order in any case pending therein, directing any claimant in such case to appear, upon reasonable notice, before any commissioner of the court, and be examined on oath touching any or all matters pertaining to said claim. Such examination shall be reduced to writing by the said commissioner, and be returned to and filed in the court, and may, at the discretion of the attorney or solicitor of the United States appearing in the case, be read and used as evidence on the trial thereof. And if any claimant, after such order is made, and due and reasonable notice thereof is given to him, fails to appear, or refuses to testify or answer fully as to all matters within his knowledge material to the issue, the court may, in its discretion, order that the said cause shall not be brought forward for trial until he shall have fully complied with the order of the court in the premises.

Revised Statutes (Second Edition), § 1080, p. 199; Act of Congress of 3d March, 1863, ch. 92, sec. 8, 12 Stat. at Large, 766; Act of Congress of 25th June, 1868, ch. 71, sec. 4, 15 Stat. at Large, 75.

SEC. 1081. The testimony in cases pending before the Court of Claims shall be taken in the county where the witness resides, when the same can be conveniently done.

Revised Statutes (Second Edition), § 1081 p. 199; Act of Congress of 24th February, 1855, ch. 122, sec. 3, 10 Stat. at Large, 613.

SEC. 1082. The Court of Claims may issue subpoenas to require the attendance of witnesses in order to be examined before any person commissioned to take testimony therein, and such subpoenas shall have the same force as if issued from a district court, and compliance therewith shall be compelled under such rules and orders as the court shall establish.

Revised Statutes (Second Edition), § 1082, p. 199; Act of Congress of 24th February, 1855, ch. 122, sec. 3, 10 Stat. at Large, 613.

SEC. 1083. In taking testimony to be used in support of any claim, opportunity shall be given to the United States to file interrogatories, or by attorney to examine witnesses, under such regulations as said court shall prescribe; and like opportunity shall be afforded the claimant, in cases where testimony is taken on behalf of the United States, under like regulations.

Revised Statutes (Second Edition), § 1083, p. 199; Act of Congress of 24th February, 1855, ch. 122, sec. 5, 10 Stat. at Large, 613.

SEC. 1084. The commissioner taking testimony to be used in the Court of Claims shall administer an oath or affirmation to the witnesses brought before him for examination.

Revised Statutes (Second Edition), § 1084, p. 199; Act of Congress of 24th February, 1855, ch. 122, sec. 3, 10 Stat. at Large, 613.

SEC. 1085. When testimony is taken for the claimant, the fees of the commissioner before whom it is taken, and the cost of the commission and notice, shall be paid by such claimant; and when it is taken at the instance of the Government, such fees, together with all postage incurred by the Assistant Attorney-General, shall be paid out of the contingent fund provided for the Court of Claims, or other appropriation made by Congress for that purpose.

Revised Statutes (Second Edition), § 1085, p. 199; Act of Congress of 24th February, 1855, ch. 122, sec. 3, 10 Stat. at Large, 613.

SEC. 1086. Any person who corruptly practises or attempts to practise any fraud against the United States in the proof, statement, establishment, or allowance of any claim, or of any part of any claim against the United States, shall ipso facto forfeit the same to the Government; and it shall be the duty of the Court of Claims, in such cases, to find specifically that such fraud was practised or attempted to be practised, and thereupon to give judgment that such claim is forfeited to the Government, and that the claimant be forever barred from prosecuting the same.

Revised Statutes (Second Edition), § 1086, p. 199; Act of Congress of 3d March, 1863, ch. 92, sec. 11, 12 Stat. at Large, 767.

SEC. 1087. When judgment is rendered against any claimant, the court may grant a new trial for any reason which, by the rules of common law or chancery in suits between individuals, would furnish sufficient ground for granting a new trial.

Revised Statutes (Second Edition), § 1087, p. 200; Act of Congress of 24th February, 1855, ch. 122, sec. 9, 10 Stat. at Large, 614.

SEC. 1088. The Court of Claims, at any time while any claim is pending before it, or on appeal from it, or within two years next after the final disposition of such claim, may, on motion on behalf of the United States, grant a new trial and stay the

payment of any judgment therein, upon such evidence, cumulative or otherwise, as shall satisfy the court that any fraud, wrong, or injustice in the premises has been done to the United States; but until an order is made staying the payment of a judgment, the same shall be payable and paid as now provided by law.

Revised Statutes (Second Edition), § 1088, p. 200; Act of Congress of 25th June, 1868, ch. 71, sec. 2, 15 Stat. at Large, 75.

SEC. 1089. In all cases of final judgments by the Court of Claims, or, on appeal, by the Supreme Court, where the same are affirmed in favor of the claimant, the sum due thereby shall be paid out of any general appropriation made by law for the payment and satisfaction of private claims, on presentation to the Secretary of the Treasury of a copy of said judgment, certified by the clerk of the Court of Claims, and signed by the chief justice, or, in his absence, by the presiding judge of said court.

Revised Statutes (Second Edition), § 1089, p. 200; Act of Congress of 3d March, 1863, ch. 92, sec. 7, 12 Stat. at Large, 766. See Act of Congress of 3d March, 1875, ch. 149, 18 Stat. at Large, 481.

SEC. 1090. In cases where the judgment appealed from is in favor of the claimant, and the same is affirmed by the Supreme Court, interest thereon at the rate of five per centum shall be allowed from the date of its presentation to the Secretary of the Treasury for payment as aforesaid, but no interest shall be allowed subsequent to the affirmance, unless presented for payment to the Secretary of the Treasury as aforesaid.

Revised Statutes (Second Edition), § 1090, p. 200; Act of Congress of 3d March, 1863, ch. 92, sec. 7, 12 Stat. at Large, 766.

SEC. 1091. No interest shall be allowed on any claim up to the time of the rendition of judgment thereon by the Court of Claims, unless upon a contract expressly stipulating for the payment of interest.

Revised Statutes (Second Edition), § 1091, p. 200; Act of Congress of 3d March, 1863, ch. 92, sec. 7, 12 Stat. at Large, 766.

SEC. 1092. The payment of the amount due by any judgment of the Court of Claims and of any interest thereon allowed by law, as hereinbefore provided, shall be a full dis-

charge to the United States of all claim and demand touching any of the matters involved in the controversy.

Revised Statutes (Second Edition), § 1092, p. 200; Act of Congress of 3d March, 1863, ch. 92, sec. 7, 12 Stat. at Large, 766.

SEC. 1093. Any final judgment against the claimant on any claim prosecuted as provided in this chapter shall forever bar any further claim or demand against the United States arising out of the matters involved in the controversy.

Revised Statutes (Second Edition), § 1093, p. 200; Act of Congress of 3d March, 1863, ch. 92, sec. 7, 12 Stat. at Large, 766.

SEC. 3477. All transfers and assignments made of any claim upon the United States, or of any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, or of any part or share thereof, shall be absolutely null and void, unless they are freely made and executed in the presence of at least two attesting witnesses, after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof.

Such transfers, assignments, and powers of attorney, must recite the warrant for payment, and must be acknowledged by the person making them, before an officer having authority to take acknowledgments of deeds, and shall be certified by the officer; and it must appear by the certificate that the officer, at the time of the acknowledgment, read and fully explained the transfer, assignment, or warrant of attorney to the person acknowledging the same.

Revised Statutes (Second Edition), § 3477, p. 689; Act of Congress of 29th July, 1846, ch. 66, 9 Stat. at Large, 41; Act of Congress of 26th February, 1853, ch. 81, sec. 1, 10 Stat. at Large, 170.

SEC. 3744. It shall be the duty of the Secretary of War, of the Secretary of the Navy, and of the Secretary of the Interior, to cause and require every contract made by them severally on behalf of the Government, or by their officers under them appointed to make such contracts, to be reduced to writing, and signed by the contracting parties with their names at the end thereof; a copy of which shall be filed

by the officer making and signing the contract in the Returns Office of the Department of the Interior, as soon after the contract is made as possible, and within thirty days, together with all bids, offers, and proposals to him made by persons to obtain the same, and with a copy of any advertisement he may have published inviting bids, offers, or proposals for the same. All the copies and papers in relation to each contract shall be attached together by a ribbon and seal, and marked by numbers in regular order, according to the number of papers composing the whole return. [See §§ 512-515.]

Revised Statutes (Second Edition), § 3744, p. 738; Act of Congress of 2d June, 1862, ch. 93, sec 1, 12 Stat. at Large, 411.

ACT OF MARCH 3D, 1877.

Be it enacted, &c., * * * * *

There shall be taxed against the losing party in each and every cause pending in the Supreme Court of the United States or in the Court of Claims of the United States, the cost of printing the record in such case, which shall be collected, except when the judgment is against the United States, by the clerks of said courts respectively, and paid into the Treasury of the United States; but this shall only apply to records printed after the first of October next. * * * * *

Act of Congress of 3d March, 1877, ch. 105, 19 Stat. at Large, 344.

RULES

OF

THE COURT OF CLAIMS.

Article 1.

ATTORNEYS AND COUNSEL.

SEC. 1. Suits may be commenced by the claimant in person, or through his attorney in fact, or an attorney of this court. If the claimant is represented by an attorney in fact, the power must be filed with the clerk, and its execution must be proved or acknowledged before an officer authorized to take acknowledgments of deeds.

SEC. 2. Any person of good moral character, who has been admitted to practise in the Supreme Court of the United States, or in the highest court of the District of Columbia, or in the highest court of any State or Territory, may be admitted, on motion in open court, to practise as an attorney and counsellor of this court.

He may also be admitted at chambers, in vacation, by any member of the court, on its being shown by his affidavit or otherwise, that he has been admitted to practise in any of the aforesaid courts, and is still entitled to practise therein.

SEC. 3. There shall be but one attorney of record for the claimant in any case at any one time ; but a claimant may be permitted to change his attorney, on such conditions as the court may prescribe. A firm of attorneys will be regarded as the attorney of record.

SEC. 4. Petitions, pleadings, and motions on the part of the claimant will be signed by the attorney of record ; pleadings and motions on the part of the United States, by the Assistant Attorney-General.

SEC. 5. Attorneys of record, or the claimant if he appear in person, will, on commencing or appearing in a suit, register with the clerk of the court a post-office address, to which all notices required by these rules or ordered by the court may be addressed.

SEC. 6. Counsel, other than the attorney of record, may be heard on either side at the trial or in any stage of the proceedings, but shall not be entitled to file pleadings, give notices, or make motions.

Article 2.

THE PETITION.

SEC. 1. Suits will be commenced by petition, verified in the manner provided by law, and filed in the office of the clerk. The clerk will note the day of the filing of the petition thereon. Within twenty days thereafter, the claimant will file in the clerk's office twenty-five printed copies of such petition and note of filing.

SEC. 2. The petition must set forth:

1st. The title of the action, with the full Christian and surnames of all the claimants.

2d. A plain, concise statement of the facts and circumstances, giving place and date, free from argumentative and impertinent matter.

3d. The prayer, in which the claimant must state distinctly the amount for which he demands judgment, or the relief for which he prays.

SEC. 3. When the claimant cannot state his case with the requisite particularity without an examination of papers in one of the executive departments, and has been unable to obtain a sufficient examination of such papers on application, he may file a petition stating his claim as far as is in his power, and specifying as definitely as he can the papers he requires in order to enable him to state his claim. The court will thereupon call upon the proper Department for such information or papers as it may deem necessary; and when the same are furnished, the petition may be amended, and the amended petition shall be printed and filed, and may take the place of the original petition.

SEC. 4. If the claimant be an executor, administrator,

guardian, or other representative, appointed by a judicial tribunal, a duly authenticated copy of the record of the appointment must be filed with the petition at the commencement of the action.

SEC. 5. If the claim be founded upon an act of Congress, or upon a regulation of an Executive Department, the act and the section thereof upon which the claimant relies must be specified, and the particular regulation of the Department must be stated in terms.

SEC. 6. If the claim be founded upon an express contract with the United States, such contract must be set forth in the petition, and, if it be in writing, must be annexed thereto. If it be founded upon an implied contract, the circumstances upon which the claimant relies to prove a contract must be specified. If it consist of several matters or items, each must be separately stated.

SEC. 7. If the petition be verified by the attorney at law or other agent of the claimant, a power of attorney authorizing him to make the verification must be filed with it.

SEC. 8. If a claimant desire to amend his petition at any time, he must set forth in his motion the specific amendments desired. If the motion be allowed, he must within twenty days thereafter file a copy of the petition, with the amendments properly incorporated therein, unless the court order otherwise.

SEC. 9. If the claimant die pending the suit, his death may be suggested on the record, and his proper representative may, on motion, and on filing a duly authenticated copy of the record of his appointment as executor or administrator, be admitted to prosecute the suit.

Article 3.

PLEAS.

SEC. 1. Demurrers to petitions and general traverses thereof must be filed within two months after the filing of the petition; and pleas averring special defence, set-off, or counter-claim, within one month after the claimant places his case on the notice-book.

SEC. 2. When the Attorney-General demurs to the peti-

tion, he must set forth the grounds of the demurrer specially; but if the ground be that the petition does not allege facts sufficient to constitute a cause of action, that objection may be stated generally.

If the demurrer be sustained, the claimant may, of right, amend his petition, within such time as the court may direct; but if he decline to amend, judgment will be rendered dismissing the petition. If the demurrer be overruled, the defendants may, of right, plead to the petition, within such time as the court may direct; but if they decline so to plead, judgment will be rendered for the claimant according to the prayer of the petition; or the court will order an assessment of damages, as the Attorney-General may elect.

SEC. 3. Within one month after the filing of a set-off or counter-claim by the defendants, the claimant must answer the same by replication under oath; in default whereof the court may, after ten days' notice by the defendants to the claimant, order that the set-off or counter-claim be considered as admitted.

SEC. 4. When the Attorney-General pleads, under section 1086 of the Revised Statutes, that the claimant has practised or attempted to practise fraud, he shall set forth the facts with sufficient particularity to enable the claimant to answer the same in detail; and the claimant shall, within two months after the filing of said plea, reply to the same with like particularity, under oath.

Article 4.

MOTIONS.

SEC. 1. Motions will be heard in the first instance before a Judge at chambers; but he may direct the same to be heard in open court. They must come to him through the clerk's office, and, when acted upon, will be returned there by him.

SEC. 2. Motions must be in writing, signed by the attorney of record, and must give the title and number of the case and the term at which they are made; and in no case shall the clerk enter the motion unless this rule be complied with.

SEC. 3. No order will be entered by the clerk unless it be

directed from the bench, or be reduced to writing and marked "Allowed" by the Chief Justice or one of the Judges.

SEC. 4. The clerk will not file any paper unless it be properly indorsed with the title and number of the suit and the name of the attorney filing it.

Article 5.

SERVICE OF NOTICES.

SEC. 1. Parties filing petitions, pleadings, and motions, except motions for calls on Departments, must at the same time leave with the clerk written notice thereof, addressed to the attorney of the adverse party, with postage prepaid, and the clerk will mail the same and note the fact on the general docket. All other notices to adverse parties may be served in like manner. The clerk's entry on his docket will be *prima facie* evidence of the service. In the computation of time, the day of the service will be excluded, and the day on which a party is required to appear, or on which an act is required to be done, will be included.

Article 6.

WITNESSES.

SEC. 1. When a petition is filed, either party may proceed to take testimony, notwithstanding that issue of fact has not been joined or that issue on demurrer may be pending.

SEC. 2. Unless the court order a witness to testify orally on the trial, the evidence of witnesses must be by deposition, taken either before a commissioner of the court, or a judge of a court of the United States, or a judge of a court of record in a State or Territory of the United States, or a commissioner appointed by a circuit court of the United States, or a notary public.

SEC. 3. When a witness can be conveniently examined before a judge of this court, either party, at any time prior to the examination, may move for an order directing that his deposition be so taken.

SEC. 4. If a witness, having been duly summoned and his fees tendered him, shall fail or refuse to appear and testify before any officer authorized to take his testimony, a rule upon

him will be issued by the court, on motion, to show cause why a fine should not be imposed upon him; and, if he fail to show sufficient cause, he shall be fined not exceeding one hundred dollars.

SEC. 5. The fees of witnesses shall be such as are now, or may hereafter be, prescribed by Congress, and shall be paid by the party at whose instance the witnesses appear.

SEC. 6. The court may remand any case to the docket, and order a witness or a claimant to be produced before the court or one of the Judges thereof for examination.

Article 7.

DEPOSITIONS ON WRITTEN INTERROGATORIES.

SEC. 1. Depositions obtained in foreign countries must be taken on written interrogatories, sent out under a special commission issued by the clerk. Depositions may be taken in like manner within the United States, by consent of parties, or when authorized by the court, or by a Judge in vacation. The written interrogatories must be filed in the clerk's office, and notice thereof given to the adverse party. Within fifteen days after such notice, the adverse party may file objections to any of the interrogatories, specifically stating the grounds of objection; and may either file cross-interrogatories, or a notice that he will cross-examine the witnesses orally; which notice shall be attached to and sent out with the special commission. If he file cross-interrogatories, the other party may, within fifteen days thereafter, file objections thereto, specifically stating the grounds of objection. No objections to an interrogatory or a cross-interrogatory will be considered at the trial unless taken before the commission issues.

SEC. 2. When a deposition is taken upon written interrogatories and written cross-interrogatories, neither the Attorney-General, nor the claimant, his agent or attorney, nor any other person, shall be present at the examination of the witness; which fact shall be certified by the officer taking the deposition; who shall, in such cases, propound the interrogatories and cross-interrogatories to the witness in their order, and reduce his answers to writing as nearly as practicable in his precise words.

Article 8.

DEPOSITIONS ON ORAL EXAMINATION.

SEC. 1. The party proposing to take depositions on oral examination shall cause fifteen days' notice to be given thereof to the other party. The notice must be in writing, and state the names of the witnesses to be examined, the day of the month, the hour, and the place of taking the deposition. When the claimant proposes to take a deposition, and the witness resides more than five hundred miles from Washington, or when the defendants propose to take the deposition, and the witness resides more than five hundred miles from the claimant or his attorney, one day's further notice shall be given for every additional hundred miles.

SEC. 2. If the claimant proposes to take a deposition in the city of Washington, three days' notice shall be sufficient; and a like notice by the defendants shall be sufficient when the claimant's attorney resides in the city of Washington.

SEC. 3. When a deposition is taken by oral examination, each question propounded to the witness must be recorded, and his answers must be taken down, as nearly as may be, in his own words.

SEC. 4. No general objection to any question shall be noticed by the officer; but where an objection is made on specifically stated grounds, the officer shall record the same in direct connection with the question objected to.

SEC. 5. When depositions are taken on notice, as provided in section 1 of this article, if both parties are present or represented at the time and place specified in the notice, either party may, after the examination of the witnesses produced under the notice, be entitled to produce and examine other witnesses; but in order thereto one day's notice must be given to the adverse party, or his attorney, there present.

Article 9.

GENERAL PROVISIONS AS TO DEPOSITIONS.

SEC. 1. Witnesses must be sworn or affirmed, before any questions are put to them, to tell the truth, the whole truth, and nothing but the truth, relative to the cause in which they

are to testify ; and each witness shall then state his name, his occupation, his age, if under twenty-one years, his place of residence ; whether he has any, and, if any, what, interest, direct or indirect, in the claim which is the subject of inquiry ; and whether, and in what degree, he is related to the claimant. At the conclusion of the deposition, the witness shall state whether he knows of any other matter relative to the claim in question ; and if he do, he shall state it. The testimony of the witness when completed shall be read over to him, and be signed by him in the presence of the officer.

SEC. 2. The officer should so connect the sheets of the deposition that they cannot be tampered with, and should return them sealed together. He should sign, and make the witness sign, each sheet ; and generally he should spare no pains to return to the court the exact evidence he has taken. All exhibits should be carefully marked so as to be capable of immediate identification, and, when practicable, should be attached to the deposition under seal.

SEC. 3. The officer must state, in the caption of the deposition, the cause in which it was taken, the place and date of taking, the name of the witness, the party by whom called, and the names of the parties and counsel present. And in the body of the deposition must also be shown by whom the witness was examined and cross-examined.

SEC. 4. In his return the officer must show that the witness was properly sworn or affirmed, and that the answers were taken down in his presence, and read over to and signed by the witness.

SEC. 5. The officer must inclose the commission, depositions, and exhibits in a packet, under his seal, and direct the same to the clerk of the court at Washington, and deposit the packet in the post-office, or in an express-office, or he may transmit the same by a messenger, whose name shall be by him indorsed on the packet.

SEC. 6. If the officer's fees be not paid at the time of taking the deposition, he should indorse on the outside of the packet the gross amount of his fees and disbursements, and inclose inside a detailed statement thereof. The packet must not be opened until the party for whom the depositions were taken

deposits with the clerk the amount indorsed thereon. The clerk will then open the packet, and tax the officer's charges at the rates hereinafter provided, and will immediately transmit to him the amount taxed, returning the overplus, if any, to the party. The money will be transmitted by draft or registered letter, and the clerk will retain his vouchers therefor.

SEC. 7. The fees shall be three dollars a day for attending to take the depositions, and twenty cents a folio of one hundred words for taking and returning it; but this *per diem* allowance is limited to one day for a deposition or series of depositions taken in the same case. Short-hand reporters, acting as special commissioners, will receive, in addition to these fees, ten cents a folio for writing out the deposition from their notes.

SEC. 8. Any permanent commissioner charging in excess of the prescribed fees, except under a previous written agreement with the parties, will be deemed guilty of improper and illegal conduct, and his commission will be revoked.

SEC. 9. Objections to the notice, or the form and manner of taking or returning the testimony, must be made in writing, and filed within one month after notice of the filing of the deposition, or they will be considered as waived.

Article 10.

EVIDENCE CERTIFIED FROM THE DEPARTMENTS.

SEC. 1. The Attorney-General may offer in evidence properly certified information and papers from any Executive Department, without calling for the same under the provisions of section 1076 of the Revised Statutes. A call for such information and papers will be made at a claimant's request, on the approval of a Judge in chambers. On the receipt of an answer to the call, the clerk will notify the claimant's counsel and the Attorney-General by post.

SEC. 2. All information or papers furnished by an Executive Department in response to a call, or through the Attorney-General, is subject to objection by either party according to the rules of evidence at the common law; but neither party will be required to produce the originals of such papers, or to

prove their execution, unless within one month after the return is filed the party objecting to such papers enter of record in the clerk's office a written denial of their genuineness.

SEC. 3. Whenever it is charged in a petition that a contract has been made or other liability incurred through an officer or agent of the United States other than the head of an Executive Department or the chief of a bureau, the claimant will be required to prove that such person was an officer or agent of the United States, by the certificate of the proper Executive Department, or by other legal and sufficient evidence.

SEC. 4. Any information or papers certified from any Executive Department, and filed in any cause, may be used and applied in any other pending cause to which the same may be applicable or pertinent. To entitle such information or papers to be so used, copies thereof must be filed in such other cause before the same shall have been placed on the trial docket.

Article 11.

PRODUCTION OF ORIGINAL PAPERS BY THE CLAIMANT.

SEC. 1. The court may, at the instance of the Attorney-General, order any claimant, his agent or attorney, to produce in court, or before any officer authorized to take depositions, any letters, papers, deeds, documents, or other writings in his possession or subject to his control, in any way relating to the claim sued upon; and any claimant, his agent or attorney, who, after due notice, refuses to produce such letters, papers, deeds, documents, or other writings, when in his power to do so, shall be subject to attachment for contempt; and if he persist in such refusal, the court will direct the petition to be dismissed.

Article 12.

BRIEFS AND REQUESTS FOR FINDINGS OF FACT.

SEC. 1. The claimant may at any time give notice to the Attorney-General that his proof is closed, by an entry to that effect in the notice-book in the clerk's office. If the Attorney-General shall not within two months thereafter file a request for further time to take proof, the claimant may, at any time after the expiration of that period, have the case placed on the trial list.

SEC. 2. The clerk shall not place a case on the trial list until the claimant files in the clerk's office twenty-five printed copies of a brief stating the points of law on which he relies, with references to authorities, and twenty-five printed copies of the request for facts required by Rule V. of the "Regulations prescribed by the Supreme Court of the United States under which appeals may be taken from the Court of Claims."

SEC. 3. Such request must be in the following terms: "*The claimant, considering the facts hereinafter set forth to be proven, and deeming them material to the due presentation of this case in the findings of fact, requests the court to find the same, as follows.*"

Following this request must be a statement, in the form of distinct numbered propositions, of the facts which the party desires to have found; and each proposition must be so prepared, with respect to its length, subject, and phraseology, that the court may conveniently pass upon it; and they must be so arranged as to present a concise statement, in orderly and logical sequence, of the whole case, as the party desires it to appear in the findings of fact. Subjoined to each proposition must be references to the pages of the record containing the evidence relied on in its support; but no evidence must be set out. Documents which may enter into the findings of fact need not be presented in the statement, but may be referred to therein by the pages of the record.

SEC. 4. The Attorney-General, within one month after the filing of the claimant's brief and request, must file his brief and request for findings of fact, and should indicate the requests on the claimant's part to which no objection is made. Such request must be in form and substance like that required of the claimant by the next preceding section.

SEC. 5. If the claimant neglect, for two years after filing his petition, to close his proof and give notice to the Attorney-General, as required by section 1 of this article, the defendants may place the case on the trial list.

SEC. 6. Whenever, in any case which the claimant has not put on the trial list, it shall be shown to the court that an early decision thereof is important to the interests of the Govern-

ment, the case may, in the discretion of the court, be placed on the trial list by the defendants.

Article 13.

TRIALS AND OTHER PROCEEDINGS IN COURT.

SEC. 1. When the defendants' brief and request are filed the case will be considered as ready for trial, and, when reached, a continuance will not be ordered, except by consent of parties, or for good cause shown.

SEC. 2. The trial docket will be made up monthly. Cases will go upon it in the order in which notices of trial have been filed.

SEC. 3. The peremptory call of the trial docket will begin on the Tuesday after the first Monday of each month during the term.

SEC. 4. No case will be heard for trial unless the printed pleadings, evidence, and briefs be made up in book form together and paged consecutively, and a copy thereof furnished to each member of the court at the hearing; and all citations from, or references to, such pleadings, evidence, and briefs must be by the consecutive paging of such book.

SEC. 5. When, in any case, the record shall be made up in book form, as required in the next preceding section, the chief clerk will make, cause to be printed, and prefix to each copy of the record so made up, a table of the contents thereof, with references to the page where each document and each piece of evidence may be found.

SEC. 6. The law docket will be taken up on Monday of each week during the term.

Article 14.

PRINTING.

SEC. 1. The testimony and briefs will be printed. In printing the testimony, the notices and the officers' captions and certificates will be omitted; but to each deposition there must be prefixed a title in the following form: *Deposition of*———*for claimant* [or defendant, as the case may be], *taken at*———, *on the*———*day of*———, 18—; *claimant's counsel,*———; *defendant's counsel*———.

SEC. 2. Where an answer of a Department is printed as evidence, the call for the same must be printed therewith.

SEC. 3. Before printing a return made to a call on a Department, the chief clerk will withhold from the copy for the printer, 1st, all papers of which copies have been previously printed in the record of the case; and for this purpose he will compare the two copies, and if variations are found he will take the directions of a Judge in chambers before sending the return to the printer; 2d, all certificates of authenticity and certificates of acknowledgment; 3d, all papers which both parties agree to omit; 4th, all papers which a Judge in chambers orders to be omitted. In each case the chief clerk will make a memorandum of the omission in the copy for the printer, verified by his initials.

SEC. 4. If the claimant objects to printing information or papers so returned, and the Attorney-General requests to have the same printed, the clerk will note a memorandum of such request in the copy for the printer, with his initials attached; and when such information or papers are printed, the same will be regarded as evidence offered on the part of the defence. All information and papers transmitted from a Department in reply to a claimant's call, and not thus objected to by him within ten days after return of the call, will be regarded as evidence offered by the claimant.

SEC. 5. The printed papers required by these rules must be in long primer type and in royal octavo pages, and the style and number of the case must be prefixed to all printed papers and to records of evidence.

SEC. 6. No deposition, return, or record on file shall be taken from the custody of the clerk by a claimant or his attorney, but either may attend at the clerk's office, and prepare his evidence for the press in the form and manner before prescribed. When the evidence is complete and ready for the printer, the chief clerk will have it printed at the Public Printing Office.

Article 15.

LIMITATION.

SEC. 1. If it appear on the face of the petition that the claim first accrued more than six years before the petition was filed,

the claimant must aver therein the existence and period of duration of some disability, recognized by law, which prevented his filing his petition within that time; in default whereof, it will be considered that no such disability existed, and the petition may be dismissed on motion.

SEC. 2. If the claimant, in avoidance of the bar of limitation, aver in his petition the existence and duration of any such disability, and it thereby appears that, after the disability ended, more than three years had elapsed before the petition was filed, the petition may be dismissed on motion.

SEC. 3. If upon the face of the petition it does not appear when the claim first accrued, the court may require the claimant to make the petition definite and certain in that regard, and in default thereof may dismiss the suit.

SEC. 4. Averments in regard to the time when a claim first accrued, or in regard to an alleged disability of the claimant, will be held to be put in issue by the defendants' general traverse.

Article 16.

DISCONTINUANCE.

SEC. 1. Where fraud or set-off is pleaded, the claimant shall not, without leave of the court, discontinue his suit. In other cases he may do so, either in open court, or, with the approval of a Judge, in vacation.

Article 17.

NEW TRIAL.

SEC. 1. A new trial will not be granted where, upon the whole case, justice has been done between the parties and the judgment is substantially right, although there may have been some mistakes committed at the trial.

SEC. 2. A motion by a claimant for a new trial may be founded upon one or more of the following grounds: 1st. Error of fact; 2d. Error of law; and 3d. Newly-discovered evidence. It must be made at the term in which the judgment is rendered, and before the commencement of the long vacation.

SEC. 3. A motion founded upon an error of fact must specify with minuteness the fact or facts which are regarded as errone-

ously found or erroneously omitted to be found by the court, with full reference to the evidence which is relied on to support the motion.

SEC. 4. A motion founded upon error of law must specify with like minuteness the points upon which the court is supposed to have erred, with references to the authorities relied upon to support the motion.

SEC. 5. A motion upon the ground of newly-discovered evidence will not be entertained unless it appear that the newly-discovered evidence came to the knowledge of the claimant or his attorney after the trial and before the motion was made; that it was not for want of due diligence that it did not sooner come to his knowledge; that it is so material that it would probably produce a different judgment if the new trial were granted; and that it is not cumulative. Such motion must be accompanied by the affidavit of the claimant or his attorney of record, setting forth—

1st. The facts in detail which the claimant expects to be able to prove, and whether the same are to be proved by witnesses or by documentary evidence.

2d. The name, occupation, and residence of each and every witness whom it is proposed to call to prove said facts.

3d. That the said facts were unknown to either the claimant or his attorney of record, and, if other counsel was employed at the trial, were unknown to such counsel, until after the close of the trial.

4th. The reasons why the claimant and his attorney of record and his said counsel could not have discovered said evidence before the trial, if due diligence had been used.

SEC. 6. If the court desires to hear argument upon a motion by a claimant for a new trial, the motion will be ordered to the law docket; otherwise decision will be announced from the bench without hearing.

Article 18.

APPEALS.

SEC. 1. Application for appeal to the Supreme Court of the United States from any judgment or decree of this court must be in writing, and signed by the claimant or his attorney of

record, if the appeal be on his behalf; or, if taken by the United States, it must be signed by the Attorney-General or his Assistant.

SEC. 2. Such application, if made when the court is not in session, must be filed with the clerk, and the date of filing the same must be indorsed upon it and noted upon the general docket.

Article 19.

CLERK'S OFFICE.

SEC. 1. During term time the clerk's office must be kept open every day, except Sundays and holidays, from 9½ A. M. to 4 P. M., or to such later hours as the court may be in session or in conference. During the Christmas holidays, the office may be closed at 1 P. M., and in vacation at 3 P. M.

SEC. 2. When the court is in session, both the chief clerk and the assistant clerk will be at the office during office hours. In vacation they may arrange their hours to suit each other and the public business.

SEC. 3. The chief clerk will have charge of the journal of the court, of the law and trials dockets, of the printing, and of the preparation of the tables of contents of the records of each case; and he will also prepare the annual return to Congress.

SEC. 4. The assistant clerk will attend to office business, and will have charge of the general docket, the notice book, and the giving of notices under these rules.

SEC. 5. In the absence of the chief or the assistant clerk, his duties will be temporarily performed by the other.

SEC. 6. Any one wishing to see any papers on file in the clerk's office will apply therefor to the chief or assistant clerk, who will take them from their place of deposit, and return them thereto when done with; and no such papers can be taken out of the clerk's office, except by authority of the court, or of one of the members thereof.

Article 20.

WITHDRAWAL OF PAPERS.

SEC. 1. Papers shall not be withdrawn from the files except on motion for good cause shown, and upon such terms as the court or a Judge may order.

Article 21.

EXTENSION OF TIME.

SEC. 1. The time named in these rules for the doing of any act may be extended on motion for good cause shown.

Article 22.

DEPARTMENTAL AND CONGRESSIONAL CASES.

SEC. 1. Cases involving controverted questions of fact or law in any claim or matter, transmitted to the court under the provisions of section 2 of the act of March 3, 1883, entitled "An Act to afford assistance and relief to Congress and the Executive Departments in the investigation of claims and demands against the Government," shall be proceeded with, in like manner, and subject to the same rules, so far as applicable, as other cases in the court under its general jurisdiction, except as herein provided.

SEC. 2. When a case is so transmitted the clerk shall examine the papers and send notice thereof by mail to every person, whose post-office address is given, who appears therefrom to be directly interested therein, and to the Attorney-General, noting the fact on the records, and specifying the names of the parties notified, and the date of notice.

SEC. 3. Within two months after mailing of such notices, or within such further time as the court may allow, any person directly interested in the case may appear as a party therein, by filing his petition, under oath, setting forth concisely and specifically his interest and claim.

SEC. 4. Any person claiming to be indirectly interested in any question involved in such case may, by leave of court, be permitted to appear and be heard on the one side or the other, as his interest may require, upon filing a petition, under oath, setting forth specifically and concisely how he claims to be so interested, and submitting the questions raised to the decision of the court.

SEC. 5. If no claimant, directly or indirectly interested, appears and files his petition within said two months, the Attorney-General, or Assistant Attorney-General charged with defending the Government in this court, may set the case down for trial upon such evidence as he may submit.

SEC. 6. When a case is transmitted to the court by either House of Congress, or a committee thereof, under the first section of said act, involving the investigation and determination of facts in any claim or matter, the clerk shall examine the papers and send notice by mail to every person, whose post-office address is given, who appears therefrom to be directly interested therein, and to the Attorney-General, noting the fact on the record and specifying the names of the parties notified and the dates thereof.

SEC. 7. Within two months after the mailing of such notices, or within such further time as the court may allow, any person directly interested in the case may appear as a party therein, by filing his petition, under oath, setting forth concisely and specifically his claim and interest. Thereafter the case shall be proceeded with, in like manner, and subject to the same rules, so far as applicable, as other cases in the court under its general jurisdiction.

III.

FEDERAL STATUTES

ESPECIALLY RELATING TO THE POWER OF THE

SUPREME COURT OF THE UNITED STATES,

TO

REGULATE THE PRACTICE

TO BE USED IN SUITS IN EQUITY

BY THE

CIRCUIT AND DISTRICT COURTS OF THE UNITED STATES,

AND THE

RULES OF PRACTICE

ADOPTED BY THE

SUPREME COURT OF THE UNITED STATES

FOR THE

COURTS OF EQUITY OF THE UNITED STATES.

FEDERAL STATUTES
ESPECIALLY RELATING TO
THE POWER OF THE SUPREME COURT
TO
REGULATE THE PRACTICE
TO BE USED IN SUITS IN EQUITY BY THE CIR-
CUIT AND DISTRICT COURTS OF THE
UNITED STATES.

“SEC. 913. The forms of mesne process and the forms and modes of proceeding in suits of equity and of admiralty and maritime jurisdiction in the circuit and district courts shall be according to the principles, rules, and usages which belong to courts of equity and of admiralty, respectively, except when it is otherwise provided by statute or by rules of court made in pursuance thereof; but the same shall be subject to alteration and addition by the said courts, respectively, and to regulation by the Supreme Court, by rules prescribed, from time to time, to any circuit or district court, not inconsistent with the laws of the United States.”

Revised Statutes (Second Edition), § 913, p. 174; Act of Congress of 29th September, 1789, ch. 21, sec. 2, 1 Stat. at Large, 93; Act of Congress of 8th May, 1792, ch. 36, sec. 2, 1 Stat. at Large, 276; Act of Congress of 19th May, 1828, ch. 68, sec. 1, 4 Stat. at Large, 278; Act of Congress of 1st August, 1842, ch. 109, 5 Stat. at Large, 499.

“SEC. 917. The Supreme Court shall have power to prescribe, from time to time, and in any manner not inconsistent with any law of the United States, the forms of writs and other process, the modes of framing and filing proceedings and pleadings, of taking and obtaining evidence, of obtaining discovery, of proceeding to obtain relief, of drawing up, entering, and enrolling decrees, and of proceeding before trustees appointed by the court, and generally to regulate the whole practice, to be used in suits in equity or admiralty, by the circuit and district courts.”

Revised Statutes (Second Edition), § 917, p. 175; Act of Congress of 23d August, 1842, ch. 188, sec. 6, 5 Stat. at Large, 518.

RULES OF PRACTICE
ADOPTED BY THE
SUPREME COURT OF THE UNITED STATES
FOR THE
COURTS OF EQUITY OF THE UNITED STATES.

PRELIMINARY REGULATIONS.

Rule 1.

The circuit courts, as courts of equity, shall be deemed always open for the purpose of filing bills, answers and other pleadings; for issuing and returning mesne and final process and commissions; and for making and directing all interlocutory motions, orders, rules, and other proceedings, preparatory to hearing of all causes upon their merits.

Rule 2.

The clerk's office shall be open, and the clerk shall be in attendance therein, on the first Monday of every month, for the purpose of receiving, entering, entertaining, and disposing of all motions, rules, orders, and other proceedings, which are grantable of course and applied for, or had by the parties or their solicitors, in all causes pending in equity, in pursuance of the rules hereby prescribed.

Rule 3.

Any judge of the circuit court, as well in vacation as in term, may, at chambers, or on the rule-days at the clerk's office, make and direct all such interlocutory orders, rules and other proceedings, preparatory to the hearing of all causes

upon their merits in the same manner and with the same effect as the circuit court could make and direct the same in term, reasonable notice of the application therefor being first given to the adverse party, or his solicitor, to appear and show cause to the contrary, at the next rule-day thereafter, unless some other time is assigned by the judge for the hearing.

Rule 4.

All motions, rules, orders, and other proceedings, made and directed at chambers, or on rule-days at the clerk's office, whether special or of course, shall be entered by the clerk in an order-book, to be kept at the clerk's office, on the day when they are made and directed; which book shall be open at all office-hours to the free inspection of the parties in any suit in equity, and their solicitors. And, except in cases where personal or other notice is specially required or directed, such entry in the order-book shall be deemed sufficient notice to the parties and their solicitors, without further service thereof, of all orders, rules, acts, notices, and other proceedings entered in such order-book, touching any and all the matters in the suits to and in which they are parties and solicitors. And notice to the solicitor shall be deemed notice to the parties for whom they appear and whom they represent, in all cases where personal notice on the parties is not otherwise specially required. Where the solicitors for all the parties in a suit reside in or near the same town or city, the judges of the circuit court may, by rule, abridge the time for notice of rules, orders, or other proceedings not requiring personal service on the parties, in their discretion.

Rule 5.

All motions and applications in the clerk's office for the issuing of mesne process and final process to enforce and execute decrees; for filing bills, answers, pleas, demurrers, and other pleadings; for making amendments to bills and answers; for taking bills *pro confesso*; for filing exceptions; and for other proceedings in the clerk's office which do not, by the rules hereinafter prescribed, require any allowance or order of the court or of any judge thereof, shall be deemed motions and applications grantable of course by the clerk of the court. But

the same may be suspended, or altered, or rescinded by any judge of the court, upon special cause shown.

Rule 6.

All motions for rules or orders and other proceedings, which are not grantable of course or without notice, shall, unless a different time be assigned by a judge of the court, be made on a rule-day, and entered in the order-book, and shall be heard at the rule-day next after that on which the motion is made. And if the adverse party, or his solicitor, shall not then appear, or shall not show good cause against the same, the motion may be heard by any judge of the court *ex parte*, and granted, as if not objected to, or refused, in his discretion.

PROCESS.

Rule 7.

The process of subpcena shall constitute the proper mesne process in all suits in equity, in the first instance, to require the defendant to appear and answer the exigency of the bill; and, unless otherwise provided in these rules, or specially ordered by the circuit court, a writ of attachment, and, if the defendant cannot be found, a writ of sequestration, or a writ of assistance to enforce a delivery of possession, as the case may require, shall be the proper process to issue for the purpose of compelling obedience to any interlocutory or final order or decree of the court.

Rule 8.

Final process to execute any decree may, if the decree be solely for the payment of money, be by a writ of execution, in the form used in the circuit court in suits at common law in actions of *assumpsit*. If the decree be for the performance of any specific act, as, for example, for the execution of a conveyance of land or the delivering up of deeds or other documents, the decree shall, in all cases, prescribe the time within which the act shall be done, of which the defendant shall be bound, without further service, to take notice; and upon affidavit of the plaintiff, filed in the clerk's office, that the same has not

been complied with within the prescribed time, the clerk shall issue a writ of attachment against the delinquent party, from which, if attached thereon, he shall not be discharged, unless upon a full compliance with the decree and the payment of all costs, or upon a special order of the court, or of a judge thereof, upon motion and affidavit, enlarging the time for the performance thereof. If the delinquent party cannot be found, a writ of sequestration shall issue against his estate upon the return of *non est inventus*, to compel obedience to the decree.

Rule 9.

When any decree or order is for the delivery of possession, upon proof made by affidavit of a demand and refusal to obey the decree or order, the party prosecuting the same shall be entitled to a writ of assistance from the clerk of the court.

Rule 10.

Every person, not being a party in any cause, who has obtained an order, or in whose favor an order shall have been made, shall be enabled to enforce obedience to such order by the same process as if he were a party to the cause; and every person, not being a party in any cause, against whom obedience to any order of the court may be enforced, shall be liable to the same process for enforcing obedience to such orders as if he were a party in the cause.

SERVICE OF PROCESS.

Rule 11.

No process of subpoena shall issue from the clerk's office in any suit in equity until the bill is filed in the office.

Rule 12.

Whenever a bill is filed, the clerk shall issue the process of subpoena thereon, as of course, upon the application of the plaintiff, which shall be returnable into the clerk's office the next rule-day, or the next rule-day but one, at the election of the plaintiff, occurring after twenty days from the time of the

issuing thereof. At the bottom of the subpoena shall be placed a memorandum, that the defendant is to enter his appearance in the suit in the clerk's office on or before the day at which the writ is returnable; otherwise, the bill may be taken *pro confesso*. Where there are more than one defendant, a writ of subpoena may, at the election of the plaintiff, be sued out separately for each defendant, except in the case of husband and wife defendants, or a joint subpoena against all the defendants.

Rule 13.

The service of all subpoenas shall be by a delivery of a copy thereof by the officer serving the same to the defendant personally, or by leaving a copy thereof at the dwelling-house or usual place of abode of each defendant, with some adult person who is a member or resident in the family.

Rule 14.

Whenever any subpoena shall be returned not executed as to any defendant, the plaintiff shall be entitled to another subpoena, *toties quoties*, against such defendant, if he shall require it, until due service is made.

Rule 15.

The service of all process, mesne and final, shall be by the marshal of the district, or his deputy, or by some other person specially appointed by the court for that purpose, and not otherwise. In the latter case, the person serving the process shall make affidavit thereof.

Rule 16.

Upon the return of the subpoena as served and executed upon any defendant, the clerk shall enter the suit upon his docket as pending in the court, and shall state the time of the entry.

APPEARANCE.

Rule 17.

The appearance-day of the defendant shall be the rule-day to which the subpoena is made returnable, provided he has

been served with the process twenty days before that day ; otherwise his appearance-day shall be the next rule-day succeeding the rule-day when the process is returnable.

The appearance of the defendant, either personally or by his solicitor, shall be entered in the order-book on the day thereof by the clerk.

BILLS TAKEN PRO CONFESSO.

Rule 18.

It shall be the duty of the defendant, unless the time shall be otherwise enlarged, for cause shown, by a judge of the court, upon motion for that purpose, to file his plea, demurrer, or answer to the bill, in the clerk's office, on the rule-day next succeeding that of entering his appearance. In default thereof, the plaintiff may, at his election, enter an order (as of course) in the order-book, that the bill be taken *pro confesso* ; and thereupon the cause shall be proceeded in *ex parte*, and the matter of the bill may be decreed by the court at any time after the expiration of thirty days from and after the entry of said order, if the same can be done without an answer, and is proper to be decreed ; or the plaintiff, if he requires any discovery or answer to enable him to obtain a proper decree, shall be entitled to process of attachment against the defendant to compel an answer, and the defendant shall not, when arrested upon such process, be discharged therefrom, unless upon filing his answer, or otherwise complying with such order as the court or a judge thereof may direct as to pleading to or fully answering the bill, within a period to be fixed by the court or judge, and undertaking to speed the cause.

Rule 19.

When the bill is taken *pro confesso* the court may proceed to a decree at any time after the expiration of thirty days from and after the entry of the order to take the bill *pro confesso*, and such decree rendered shall be deemed absolute, unless the court shall, at the same term, set aside the same, or enlarge the time for filing the answer, upon cause shown upon motion and affidavit of the defendant. And no such motion shall be

granted, unless upon the payment of the costs of the plaintiff in the suit up to that time, or such part thereof as the court shall deem reasonable, and unless the defendant shall undertake to file his answer within such time as the court shall direct, and submit to such other terms as the court shall direct, for the purpose of speeding the cause.

FRAME OF BILLS.

Rule 20.

Every bill, in the introductory part thereof, shall contain the names, places of abode, and citizenship of all the parties, plaintiffs and defendants, by and against whom the bill is brought. The form, in substance, shall be as follows: "To the judges of the circuit court of the United States for the district of —: A. B., of —, and a citizen of the State of —, brings this his bill against C. D., of —, and a citizen of the State of —, and E. F., of —, and a citizen of the State of —. And thereupon your orator complains and says that," &c.

Rule 21.

The plaintiff, in his bill, shall be at liberty to omit, at his option, the part which is usually called the common confederacy clause of the bill, averring a confederacy between the defendants to injure or defraud the plaintiff; also what is commonly called the charging part of the bill, setting forth the matters or excuses which the defendant is supposed to intend to set up by way of defence to the bill; also what is commonly called the jurisdiction clause of the bill, that the acts complained of are contrary to equity, and that the defendant is without any remedy at law; and the bill shall not be demurable therefor. And the plaintiff may, in the narrative or stating part of his bill, state and avoid, by counter-averments, at his option, any matter or thing which he supposes will be insisted upon by the defendant by way of defence or excuse to the case made by the plaintiff for relief. The prayer of the bill shall ask the special relief to which the plaintiff supposes himself entitled, and also shall contain a prayer for general relief; and if an injunction, or a writ of *ne exeat regno*, or any

other special order, pending the suit, is required, it shall also be specially asked for.

Rule 22.

If any persons, other than those named as defendants in the bill, shall appear to be necessary or proper parties thereto, the bill shall aver the reason why they are not made parties, by showing them to be without the jurisdiction of the court, or that they cannot be joined without ousting the jurisdiction of the court as to the other parties. And as to persons who are without the jurisdiction and may properly be made parties, the bill may pray that process may issue to make them parties to the bill if they should come within the jurisdiction.

Rule 23.

The prayer for process of subpoena in the bill shall contain the names of all the defendants named in the introductory part of the bill, and if any of them are known to be infants under age, or otherwise under guardianship, shall state the fact, so that the court may take order thereon, as justice may require upon the return of the process. If an injunction, or a writ of *ne exeat regno*, or any other special order, pending the suit, is asked for in the prayer for relief, that shall be sufficient, without repeating the same in the prayer for process.

Rule 24.

Every bill shall contain the signature of counsel annexed to it, which shall be considered as an affirmation on his part that, upon the instructions given to him and the case laid before him, there is good ground for the suit, in the manner in which it is framed.

Rule 25.

In order to prevent unnecessary costs and expenses, and to promote brevity, succinctness, and directness in the allegations of bills and answers, the regular taxable costs for every bill and answer shall in no case exceed the sum which is allowed in the State court of chancery in the district, if any there be; but if there be none, then it shall not exceed the sum of three dollars for every bill or answer.

SCANDAL AND IMPERTINENCE IN BILLS.

Rule 26.

Every bill shall be expressed in as brief and succinct terms as it reasonably can be, and shall contain no unnecessary recitals of deeds, documents, contracts, or other instruments, in *hæc verba*, or any other impertinent matter, or any scandalous matter not relevant to the suit. If it does, it may, on exceptions, be referred to a master, by any judge of the court, for impertinence or scandal; and if so found by him, the matter shall be expunged at the expense of the plaintiff, and he shall pay to the defendant all his costs in the suit up to that time, unless the court or a judge thereof shall otherwise order. If the master shall report that the bill is not scandalous or impertinent, the plaintiff shall be entitled to all costs occasioned by the reference.

Rule 27.

No order shall be made by any judge for referring any bill, answer, or pleading, or other matter or proceeding, depending before the court, for scandal or impertinence, unless exceptions are taken in writing and signed by counsel, describing the particular passages which are considered to be scandalous or impertinent; nor unless the exceptions shall be filed on or before the next rule-day after the process on the bill shall be returnable, or after the answer or pleading is filed. And such order, when obtained, shall be considered as abandoned, unless the party obtaining the order shall, without any unnecessary delay, procure the master to examine and report for the same on or before the next succeeding rule-day, or the master shall certify that further time is necessary for him to complete the examination.

AMENDMENT OF BILLS.

Rule 28.

The plaintiff shall be at liberty, as a matter of course, and without payment of costs, to amend his bill, in any matters whatsoever, before any copy has been taken out of the clerk's office, and in any small matters afterwards, such as filling

blanks, correcting errors of dates, misnomer of parties, misdescription of premises, clerical errors, and generally in matters of form. But if he amend in a material point (as he may do of course) after a copy has been so taken, before any answer or plea or demurrer to the bill, he shall pay to the defendant the costs occasioned thereby, and shall, without delay, furnish him a fair copy thereof, free of expense, with suitable references to the places where the same are to be inserted. And if the amendments are numerous, he shall furnish, in like manner, to the defendant, a copy of the whole bill as amended; and if there be more than one defendant, a copy shall be furnished to each defendant affected thereby.

Rule 29.

After an answer, or plea, or demurrer is put in, and before replication, the plaintiff may, upon motion or petition, without notice, obtain an order from any judge of the court to amend his bill on or before the next succeeding rule-day, upon payment of costs or without payment of costs, as the court or a judge thereof may in his discretion direct. But after replication filed, the plaintiff shall not be permitted to withdraw it and to amend his bill, except upon a special order of a judge of the court, upon motion or petition, after due notice to the other party, and upon proof by affidavit that the same is not made for the purpose of vexation or delay, or that the matter of the proposed amendment is material, and could not with reasonable diligence have been sooner introduced into the bill, and upon the plaintiff's submitting to such other terms as may be imposed by the judge for speeding the cause.

Rule 30.

If the plaintiff so obtaining any order to amend his bill after answer, or plea, or demurrer, or after replication, shall not file his amendments or amended bill, as the case may require, in the clerk's office on or before the next succeeding rule-day, he shall be considered to have abandoned the same, and the cause shall proceed as if no application for any amendment had been made.

DEMURRERS AND PLEAS.

Rule 31.

No demurrer or plea shall be allowed to be filed to any bill, unless upon a certificate of counsel, that in his opinion it is well founded in point of law, and supported by the affidavit of the defendant; that it is not interposed for delay; and, if a plea, that it is true in point of fact.

Rule 32.

The defendant may at any time before the bill is taken for confessed, or afterward with the leave of the court, demur or plead to the whole bill, or to part of it, and he may demur to part, plead to part, and answer as to the residue; but in every case in which the bill specially charges fraud or combination, a plea to such part must be accompanied with an answer fortifying the plea and explicitly denying the fraud and combination, and the facts on which the charge is founded.

Rule 33.

The plaintiff may set down the demurrer or plea to be argued, or he may take issue on the plea. If, upon an issue, the facts stated in the plea be determined for the defendant, they shall avail him as far as in law and equity they ought to avail him.

Rule 34.

If, upon the hearing, any demurrer or plea is overruled, the plaintiff shall be entitled to his costs in the cause up to that period unless the court shall be satisfied that the defendant has good ground, in point of law or fact, to interpose the same, and it was not interposed vexatiously or for delay. And, upon the overruling of any plea or demurrer, the defendant shall be assigned to answer the bill, or so much thereof as is covered by the plea or demurrer, the next succeeding rule-day, or at such other period as, consistently with justice and the rights of the defendant, the same can, in the judgment of the court, be reasonably done; in default whereof, the bill shall be taken against him *pro confesso*, and the matter thereof proceeded in and decreed accordingly.

Rule 35.

If, upon the hearing, any demurrer or plea shall be allowed, the defendant shall be entitled to his costs. But the court may, in its discretion, upon motion of the plaintiff, allow him to amend his bill, upon such terms as it shall deem reasonable.

Rule 36.

No demurrer or plea shall be held bad and overruled upon argument, only because such demurrer or plea shall not cover so much of the bill as it might by law have extended to.

Rule 37.

No demurrer or plea shall be held bad and overruled upon argument, only because the answer of the defendant may extend to some part of the same matter as may be covered by such demurrer or plea.

Rule 38.

If the plaintiff shall not reply to any plea, or set down any plea or demurrer for argument on the rule-day when the same is filed, or on the next succeeding rule-day, he shall be deemed to admit the truth and sufficiency thereof, and his bill shall be dismissed as of course, unless a judge of the court shall allow him further time for that purpose.

ANSWERS.***Rule 39.***

The rule, that if a defendant submits to answer he shall answer fully to all the matters of the bill, shall no longer apply in cases where he might by plea protect himself from such answer and discovery. And the defendant shall be entitled in all cases by answer to insist upon all matters of defence (not being matters of abatement, or to the character of the parties, or matters of form) in bar of or to the merits of the bill, of which he may be entitled to avail himself by a plea in bar; and in such answer he shall not be compellable to answer any other matters than he would be compellable to answer and discover upon filing a plea in bar and an answer in support of such plea, touching the matters set forth in the bill to

avoid or repel the bar or defence. Thus, for example, a *bond-fide* purchaser, for a valuable consideration without notice, may set up that defence by way of answer instead of plea, and shall be entitled to the same protection, and shall not be compellable to make any further answer or discovery of his title than he would be in any answer in support of such plea.

Rule 40.

A defendant shall not be bound to answer any statement or charge in the bill, unless specially and particularly interrogated thereto; and a defendant shall not be bound to answer any interrogatory in the bill, except those interrogatories which such defendant is required to answer; and where a defendant shall answer any statement or charge in the bill to which he is not interrogated, only by stating his ignorance of the matter so stated or charged, such answer shall be deemed impertinent.

DECEMBER TERM, 1850.

Ordered, That the fortieth rule, heretofore adopted and promulgated by this court as one of the rules of practice in suits in equity in the circuit courts, be, and the same is hereby, repealed and annulled. And it shall not hereafter be necessary to interrogate a defendant specially and particularly upon any statement in the bill, unless the complainant desires to do so, to obtain a discovery.

Rule 41.

The interrogatories contained in the interrogating part of the bill shall be divided as conveniently as may be from each other, and numbered consecutively 1, 2, 3, &c.; and the interrogatories which each defendant is required to answer shall be specified in a note at the foot of the bill, in the form or to the effect following, that is to say: "The defendant (A. B.) is required to answer the interrogatories numbered respectively 1, 2, 3," &c.; and the office copy of the bill taken by each defendant shall not contain any interrogatories except those which such defendant is so required to answer, unless such defendant shall require to be furnished with a copy of the whole bill.

DECEMBER TERM, 1871.

Amendment to 41st Equity Rule.

If the complainant, in his bill, shall waive an answer under oath, or shall only require an answer under oath with regard to certain specified interrogatories, the answer of the defendant, though under oath, except such part thereof as shall be directly responsive to such interrogatories, shall not be evidence in his favor, unless the cause be set down for hearing on bill and answer only; but may nevertheless be used as an affidavit, with the same effect as heretofore, on a motion to grant or dissolve an injunction, or on any other incidental motion in the cause; but this shall not prevent a defendant from becoming a witness in his own behalf under section 3 of the act of Congress of July 2, 1864.

Rule 42.

The note at the foot of the bill, specifying the interrogatories which each defendant is required to answer, shall be considered and treated as part of the bill, and the addition of any such note to the bill, or any alteration in or addition to such note, after the bill is filed, shall be considered and treated as an amendment of the bill.

Rule 43.

Instead of the words of the bill now in use, preceding the interrogating part thereof, and beginning with the words "To the end therefore," there shall hereafter be used words in the form or to the effect following: "To the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief hereby prayed, and may, upon their several and respective corporal oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to such of the several interrogatories hereinafter numbered and set forth, as by the note hereunder written they are respectively required to answer; that is to say—

"1. Whether, &c.

"2. Whether, &c."

Rule 44.

A defendant shall be at liberty, by answer, to decline answering any interrogatory, or part of an interrogatory, from answering which he might have protected himself by demurrer; and he shall be at liberty so to decline notwithstanding he shall answer other parts of the bill from which he might have protected himself by demurrer.

Rule 45.

No special replication to any answer shall be filed. But if any matter alleged in the answer shall make it necessary for the plaintiff to amend his bill, he may have leave to amend the same with or without the payment of costs, as the court, or a judge thereof, may in his discretion direct.

Rule 46.

In every case where an amendment shall be made after answer filed, the defendant shall put in a new or supplemental answer on or before the next succeeding rule-day after that on which the amendment or amended bill is filed, unless the time is enlarged or otherwise ordered by a judge of the court; and upon his default, the like proceedings may be had as in cases of an omission to put in an answer.

PARTIES TO BILLS.

Rule 47.

In all cases where it shall appear to the court that persons, who might otherwise be deemed necessary or proper parties to the suit, cannot be made parties by reason of their being out of the jurisdiction of the court, or incapable otherwise of being made parties, or because their joinder would oust the jurisdiction of the court as to the parties before the court, the court may in their discretion proceed in the cause without making such persons parties; and in such cases the decree shall be without prejudice to the rights of the absent parties.

Rule 48.

Where the parties on either side are very numerous, and

cannot, without manifest inconvenience and oppressive delays in the suit, be all brought before it, the court in its discretion may dispense with making all of them parties, and may proceed in the suit, having sufficient parties before it to represent all the adverse interest of the plaintiffs and the defendants in the suit properly before it. But, in such cases, the decree shall be without prejudice to the rights and claims of all the absent parties.

Rule 49.

In all suits concerning real estate which is vested in trustees by devise, and such trustees are competent to sell and give discharges for the proceeds of the sale, and for the rents and profits of the estate, such trustees shall represent the persons beneficially interested in the estate, or the proceeds, or the rents and profits, in the same manner and to the same extent as the executors or administrators in suits concerning personal estate represent the persons beneficially interested in such personal estate; and in such cases it shall not be necessary to make the persons beneficially interested in such real estate, or rents and profits, parties to the suit; but the court may, upon consideration of the matter on the hearing, if it shall so think fit order such persons to be made parties.

Rule 50.

In suits to execute the trusts of a will, it shall not be necessary to make the heir at law a party; but the plaintiffs shall be at liberty to make the heir at law a party where he desires to have the will established against him.

Rule 51.

In all cases in which the plaintiff has a joint and several demand against several persons, either as principals or sureties, it shall not be necessary to bring before the court as parties to a suit concerning such demand, all the persons liable thereto; but the plaintiff may proceed against one or more of the persons severally liable.

Rule 52.

Where the defendant shall, by his answer, suggest that the

bill is defective for want of parties, the plaintiff shall be at liberty, within fourteen days after answer filed, to set down the cause for argument upon that objection only; and the purpose for which the same is so set down shall be notified by an entry, to be made in the clerk's order-book, in the form or to the effect following (that is to say): "Set down upon the defendant's objection for want of parties." And where the plaintiff shall not set down his cause, but shall proceed therewith to a hearing, notwithstanding an objection for want of parties taken by the answer, he shall not, at the hearing of the cause, if the defendant's objection shall then be allowed, be entitled as of course to an order for liberty to amend his bill by adding parties. But the court, if it thinks fit, shall be at liberty to dismiss the bill.

Rule 53.

If a defendant shall, at the hearing of a cause, object that a suit is defective for want of parties not having by plea or answer taken the objection, and therein specified by name or description of parties to whom the objection applies, the court (if it shall think fit) shall be at liberty to make a decree saving the rights of the absent parties.

NOMINAL PARTIES TO BILLS.

Rule 54.

Where no account, payment, conveyance, or other direct relief is sought against a party to a suit, not being an infant, the party, upon service of the subpoena upon him, need not appear and answer the bill, unless the plaintiff specially requires him so to do by the prayer of his bill; but he may appear and answer at his option; and if he does not appear and answer he shall be bound by all the proceedings in the cause. If the plaintiff shall require him to appear and answer he shall be entitled to the costs of all the proceedings against him, unless the court shall otherwise direct.

Rule 55.

Whenever an injunction is asked for by the bill to stay pro-

ceedings at law, if the defendant do not enter his appearance, and plead, demur, or answer to the same within the time prescribed therefor by these rules, the plaintiff shall be entitled as of course, upon motion, without notice, to such injunction. But special injunctions shall be grantable only upon due notice to the other party by the court in term, or by a judge thereof in vacation, after a hearing, which may be *ex parte*, if the adverse party does not appear at the time and place ordered. In every case where an injunction—either the common injunction or a special injunction—is awarded in vacation, it shall, unless previously dissolved by the judge granting the same, continue until the next term of the court, or until it is dissolved by some other order of the court.

BILLS OF REVIVOR AND SUPPLEMENTAL BILLS.

Rule 56.

Whenever a suit in equity shall become abated by the death of either party, or by any other event, the same may be revived by a bill of revivor, or a bill in the nature of a bill of revivor, as the circumstances of the case may require, filed by the proper parties, entitled to revive the same; which bill may be filed in the clerk's office at any time; and, upon suggestion of the facts, the proper process of subpoena shall, as of course, be issued by the clerk, requiring the proper representatives of the other party to appear and show cause, if any they have, why the cause should not be revived. And if no cause shall be shown at the next rule-day which shall occur after fourteen days from the time of the service of the same process, the suit shall stand revived, as of course.

Rule 57.

Whenever any suit in equity shall become defective from any event happening after the filing of the bill, (as, for example, by change of interest in the parties,) or for any other reason a supplemental bill, or a bill in the nature of a supplemental bill, may be necessary to be filed in the cause, leave to file the same may be granted by any judge of the court on any rule-day, upon proper cause shown, and due notice to the other

party. And if leave is granted to file such supplemental bill, the defendant shall demur, plead, or answer thereto, on the next succeeding rule-day after the supplemental bill is filed in the clerk's office, unless some other time shall be assigned by a judge of the court.

Rule 58.

It shall not be necessary in any bill of revivor or supplemental bill to set forth any of the statements in the original suit, unless the special circumstances of the case may require it.

ANSWERS.

Rule 59.

Every defendant may swear to his answer before any justice or judge of any court of the United States, or before any commissioner appointed by any circuit court to take testimony or depositions, or before any master in chancery appointed by any circuit court, or before any judge of any court of a State or Territory.

AMENDMENT OF ANSWERS.

Rule 60.

After an answer is put in, it may be amended, as of course, in any matter of form, or by filling up a blank, or correcting a date, or reference to a document, or other small matter, and be resworn, at any time before a replication is put in, or the cause is set down for a hearing upon bill and answer. But after replication, or such setting down for a hearing, it shall not be amended in any material matters, as by adding new facts or defences, or qualifying or altering the original statements, except by special leave of the court, or of a judge thereof, upon motion and cause shown, after due notice to the adverse party, supported, if required, by affidavit; and in every case where leave is so granted, the court or the judge granting the same may, in his discretion, require that the same be separately engrossed, and added as a distinct amendment to the original answer, so as to be distinguishable therefrom.

EXCEPTIONS TO ANSWERS.

Rule 61.

After an answer is filed on any rule-day, the plaintiff shall be allowed until the next succeeding rule-day to file in the clerk's office exceptions thereto for insufficiency, and no longer, unless a longer time shall be allowed for the purpose, upon cause shown to the court, or a judge thereof; and, if no exception shall be filed thereto within that period, the answer shall be deemed and taken to be sufficient.

Rule 62.

When the same solicitor is employed for two or more defendants, and separate answers shall be filed, or other proceedings had, by two or more of the defendants separately, costs shall not be allowed for such separate answers, or other proceedings, unless a master, upon reference to him, shall certify that such separate answers and other proceedings were necessary or proper, and ought not to have been joined together.

Rule 63.

Where exceptions shall be filed to the answer for insufficiency, within the period prescribed by these rules, if the defendant shall not submit to the same and file an amended answer on the next succeeding rule-day, the plaintiff shall forthwith set them down for a hearing on the next succeeding rule-day thereafter, before a judge of the court, and shall enter, as of course, in the order-book, an order for that purpose; and if he shall not so set down the same for a hearing, the exceptions shall be deemed abandoned, and the answer shall be deemed sufficient; provided, however, that the court, or any judge thereof, may, for good cause shown, enlarge the time for filing exceptions, or for answering the same, in his discretion, upon such terms as he may deem reasonable.

Rule 64.

If, at the hearing, the exceptions shall be allowed, the defendant shall be bound to put in a full and complete answer thereto on the next succeeding rule-day; otherwise the plain-

tiff shall, as of course, be entitled to take the bill, so far as the matter of such exceptions is concerned, as confessed, or, at his election, he may have a writ of attachment to compel the defendant to make a better answer to the matter of the exceptions; and the defendant, when he is in custody upon such writ, shall not be discharged therefrom but by an order of the court, or of a judge thereof, upon his putting in such answer, and complying with such other terms as the court or judge may direct.

Rule 65.

If, upon argument, the plaintiff's exceptions to the answer shall be overruled, or the answer shall be adjudged insufficient, the prevailing party shall be entitled to all the costs occasioned thereby, unless otherwise directed by the court, or the judge thereof, at the hearing upon the exceptions.

REPLICATION AND ISSUE.

Rule 66.

Whenever the answer of the defendant shall not be excepted to, or shall be adjudged or deemed sufficient, the plaintiff shall file the general replication thereto on or before the next succeeding rule-day thereafter; and in all cases where the general replication is filed, the cause shall be deemed, to all intents and purposes, at issue, without any rejoinder or other pleading on either side. If the plaintiff shall omit or refuse to file such replication within the prescribed period, the defendant shall be entitled to an order, as of course, for a dismissal of the suit; and the suit shall thereupon stand dismissed, unless the court, or a judge thereof, shall, upon motion, for cause shown, allow a replication to be filed *nunc pro tunc*, the plaintiff submitting to speed the cause, and to such other terms as may be directed.

TESTIMONY—HOW TAKEN.

Rule 67.

After the cause is at issue, commissions to take testimony may be taken out in vacation as well as in term, jointly by both parties, or severally by either party, upon interrogatories

filed by the party taking out the same in the clerk's office, ten days' notice thereof being given to the adverse party to file cross-interrogatories before the issuing of the commission; and if no cross-interrogatories are filed at the expiration of the time, the commission may issue *ex parte*. In all cases, the commissioner or commissioners shall be named by the court, or by a judge thereof. If the parties shall so agree, the testimony may be taken upon oral interrogatories by the parties or their agents, without filing any written interrogatories.

DECEMBER TERM, 1854.

Ordered, That the sixty-seventh rule governing equity practice be so amended as to allow the presiding judge of any court exercising jurisdiction, either in term time or in vacation, to vest in the clerk of said court general power to name commissioners to take testimony in like manner that the court or judge thereof can now do by the said sixty-seventh rule.

DECEMBER TERM, 1861.

Ordered, That the last paragraph in the sixty-seventh rule in equity be repealed, and the rule be amended as follows: Either party may give notice to the other that he desires the evidence to be adduced in the cause to be taken orally, and thereupon all the witnesses to be examined shall be examined before one of the examiners of the court, or before an examiner to be specially appointed by the court, the examiner to be furnished with a copy of the bill and answer, if any; and such examination shall take place in the presence of the parties, or their agents, by their counsel or solicitors, and the witnesses shall be subject to cross-examination and re-examination, and which shall be conducted as near as may be in the mode now used in common-law courts. The depositions taken upon such oral examinations shall be taken down in writing by the examiner in the form of narrative, unless he determines the examination shall be by question and answer in special instances; and when completed, shall be read over to the witness and signed by him in the presence of the parties or counsel, or such of them as may attend; provided, if the witness shall refuse to sign the said deposition, then the examiner shall sign the

same ; and the examiner may, upon all examinations, state any special matters to the court as he shall think fit ; and any question or questions which may be objected to shall be noted by the examiner upon the deposition, but he shall not have power to decide on the competency, materiality, or relevancy of the questions ; and the court shall have power to deal with the costs of incompetent, immaterial, or irrelevant depositions, or parts of them, as may be just.

The compulsory attendance of witnesses.

In case of refusal of witnesses to attend, to be sworn, or to answer any question put by the examiner, or by counsel or solicitor, the same practice shall be adopted as is now practised with respect to witnesses to be produced on examination before an examiner of said court on written interrogatories.

Notice shall be given by the respective counsel or solicitors, to the opposite counsel or solicitors, or parties, of the time and place of the examination, for such reasonable time as the examiner may fix by order in each cause.

When the examination of witnesses before the examiner is concluded, the original deposition, authenticated by the signature of the examiner, shall be transmitted by him to the clerk of the court, to be there filed, of record, in the same mode as prescribed in the thirtieth section of act of Congress, September 24th, 1789.

Testimony may be taken on commission in the usual way, by written interrogatories and cross-interrogatories, on motion to the court in term time, or to a judge in vacation, for special reasons satisfactory to the court or judge.

DECEMBER TERM, 1869.

Amendment to 67th Rule.

Where the evidence to be adduced in a cause is to be taken orally, as provided in the order passed at the December term, 1861, amending the 67th General Rule, the court may, on motion of either party, assign a time within which the complainant shall take his evidence in support of the bill, and a time thereafter within which the defendant shall take his evidence in defence, and a time thereafter within which the complainant

shall take his evidence in reply ; and no further evidence shall be taken in the cause, unless by agreement of the parties, or by leave of court first obtained, on motion, for cause shown.

Rule 68.

Testimony may also be taken in the cause, after it is at issue, by deposition, according to the act of Congress. But in such case, if no notice is given to the adverse party of the time and place of taking the deposition, he shall, upon motion and affidavit of the fact, be entitled to a cross-examination of the witness, either under a commission or by a new deposition taken under the acts of Congress, if a court or a judge thereof shall, under all the circumstances, deem it reasonable.

Rule 69.

Three months, and no more, shall be allowed for the taking of testimony after the cause is at issue, unless the court, or a judge thereof, shall, upon special cause shown by either party, enlarge the time ; and no testimony taken after such period shall be allowed to be read in evidence at the hearing. Immediately upon the return of the commissions and depositions containing the testimony into the clerk's office, publication thereof may be ordered in the clerk's office, by any judge of the court, upon due notice to the parties, or it may be enlarged, as he may deem reasonable under all the circumstances ; but, by consent of the parties, publication of the testimony may at any time pass into the clerk's office, such consent being in writing, and a copy thereof entered in the order-books, or indorsed upon the deposition or testimony.

TESTIMONY DE BENE ESSE.

Rule 70.

After any bill filed and before the defendant hath answered the same, upon affidavit made that any of the plaintiff's witnesses are aged and infirm, or going out of the country, or that any one of them is a single witness to a material fact, the clerk of the court shall, as of course, upon the application of the plaintiff, issue a commission to such commissioner or commissioners as a judge of the court may direct, to take the exami-

nation of such witness or witnesses *de bene esse*, upon giving due notice to the adverse party of the time and place of taking his testimony.

FORM OF THE LAST INTERROGATORY.

Rule 71.

The last interrogatory in the written interrogatories to take testimony now commonly in use shall in the future be altered, and stated in substance thus: "Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea set forth the same fully and at large in your answer."

CROSS-BILL.

Rule 72.

Where a defendant in equity files a cross-bill for discovery only against the plaintiff in the original bill, the defendant to the original bill shall first answer thereto before the original plaintiff shall be compellable to answer the cross-bill. The answer of the original plaintiff to such cross-bill may be read and used by the party filing the cross-bill at the hearing, in the same manner and under the same restrictions as the answer praying relief may now be read and used.

REFERENCE TO AND PROCEEDINGS BEFORE MASTERS.

Rule 73.

Every decree for an account of the personal estate of a testator or intestate shall contain a direction to the master to whom it is referred to take the same to inquire and state to the court what parts, if any, of such personal estate are outstanding or undisposed of, unless the court shall otherwise direct.

Rule 74.

Whenever any reference of any matter is made to a master

to examine and report thereon, the party at whose instance or for whose benefit the reference is made shall cause the same to be presented to the master for a hearing on or before the next rule-day succeeding the time when the reference was made; if he shall omit to do so, the adverse party shall be at liberty forthwith to cause proceedings to be had before the master, at the costs of the party procuring the reference.

Rule 75.

Upon every such reference, it shall be the duty of the master, as soon as he reasonably can after the same is brought before him, to assign a time and place for proceedings in the same, and to give due notice thereof to each of the parties, or their solicitors; and if either party shall fail to appear at the time and place appointed, the master shall be at liberty to proceed *ex parte*, or, in his discretion, to adjourn the examination and proceedings to a future day, giving notice to the absent party or his solicitor of such adjournment; and it shall be the duty of the master to proceed with all reasonable diligence in every such reference, and with the least practicable delay, and either party shall be at liberty to apply to the court, or a judge thereof, for an order to the master to speed the proceedings and to make his report and to certify to the court or judge the reasons for any delay.

Rule 76.

In the reports made by the master to the court, no part of any state of facts, charge, affidavit, deposition, examination, or answer brought in or used before them shall be stated or recited. But such state of facts, charge, affidavit, deposition, examination, or answer shall be identified, specified, and referred to, so as to inform the court what state of facts, charge, affidavit, deposition, examination, or answer were so brought in or used.

Rule 77.

The master shall regulate all the proceedings in every hearing before him, upon every such reference; and he shall have full authority to examine the parties in the cause, upon oath, touching all matters contained in the reference; and also to

require the production of all books, papers, writings, vouchers, and other documents applicable thereto; and also to examine on oath *viva voce*, all witnesses produced by the parties before him, and to order the examination of other witnesses to be taken, under a commission to be issued upon his certificate from the clerk's office or by deposition, according to the acts of Congress, or otherwise, as hereinafter provided; and also to direct the mode in which the matters requiring evidence shall be proved before him; and generally to do all other acts, and direct all other inquiries and proceedings in the matters before him, which he may deem necessary and proper to the justice and merits thereof and the rights of the parties.

Rule 78.

Witnesses who live within the district may, upon due notice to the opposite party, be summoned to appear before the commissioner appointed to take testimony, or before a master or examiner appointed in any cause, by subpoena in the usual form, which may be issued by the clerk in blank, and filled up by the party praying the same, or by the commissioner, master, or examiner, requiring the attendance of the witnesses at the time and place specified, who shall be allowed for attendance the same compensation as for attendance in court; and if any witness shall refuse to appear or give evidence, it shall be deemed a contempt of the court, which being certified to the clerk's office by the commissioner, master, or examiner, an attachment may issue thereupon by order of the court or of any judge thereof, in the same manner as if the contempt were for not attending, or for refusing to give testimony in the court. But nothing herein contained shall prevent the examination of witnesses *viva voce* when produced in open court, if the court shall, in its discretion, deem it advisable.

Rule 79.

All parties accounting before a master shall bring in their respective accounts in the form of debtor and creditor; and any of the other parties who shall not be satisfied with the account so brought in shall be at liberty to examine the accounting party *viva voce*, or upon interrogatories, in the master's office, or by deposition, as the master shall direct.

Rule 80.

All affidavits, depositions, and documents which have been previously made, read, or used in the court, upon any proceeding in any cause or matter, may be used before the master.

Rule 81.

The master shall be at liberty to examine any creditor or other person coming in to claim before him, either upon written interrogatories or *viva voce*, or in both modes, as the nature of the case may appear to him to require. The evidence upon such examinations shall be taken down by the master, or by some other person by his order and in his presence, if either party requires it, in order that the same may be used by the court, if necessary.

Rule 82.

The circuit courts may appoint standing masters in chancery in their respective districts, both the judges concurring in the appointment; and they may also appoint a master *pro hac vice* in any particular case. The compensation to be allowed to every master in chancery for his services in any particular case shall be fixed by the circuit court, in its discretion, having regard to all the circumstances thereof, and the compensation shall be charged upon and borne by such of the parties in the cause as the court shall direct. The master shall not retain his report as security for his compensation; but, when the compensation is allowed by the court, he shall be entitled to an attachment for the amount against the party who is ordered to pay the same, if, upon notice thereof, he does not pay it within the time prescribed by the court.

EXCEPTIONS TO REPORT OF MASTER.**Rule 83.**

The master, as soon as his report is ready, shall return the same into the clerk's office, and the day of the return shall be entered by the clerk in the order book. The parties shall have one month from the time of filing the report to file exceptions thereto; and, if no exceptions are within that period filed by

either party, the report shall stand confirmed on the next rule-day after the month is expired. If exceptions are filed, they shall stand for hearing before the court, if the court is then in session; or, if not, then at the next sitting of the court which shall be held thereafter, by adjournment or otherwise.

Rule 84.

And, in order to prevent exceptions to reports from being filed for frivolous causes, or for mere delay, the party whose exceptions are overruled shall, for every exception overruled, pay costs to the other party, and for every exception allowed shall be entitled to costs; the cost to be fixed in each case by the court, by a standing rule of the circuit court.

DECREES.

Rule 85.

Clerical mistakes in decrees or decretal orders, or errors arising from any accidental slip or omission, may, at any time before an actual enrolment thereof, be corrected by order of the court or a judge thereof, upon petition, without the form or expense of a rehearing.

Rule 86.

In drawing up decrees and orders, neither the bill, nor answer, nor other pleadings, nor any part thereof, nor the report of any master, nor any other prior proceeding, shall be recited or stated in the decree or order; but the decree and order shall begin, in substance, as follows: "This cause came on to be heard (or to be further heard, as the case may be) at this term, and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows, viz: " [Here insert the decree or order.]

GUARDIANS AND PROCHEIN AMIS.

Rule 87.

Guardians *ad litem* to defend a suit may be appointed by the court, or by any judge thereof, for infants or other persons who are under guardianship, or otherwise incapable to

sue for themselves. All infants and other persons so incapable may sue by their guardians, if any, or by their *prochein ami*; subject, however, to such orders as the court may direct for the protection of infants and other persons.

Rule 88.

Every petition for a rehearing shall contain the special matter or cause on which such rehearing is applied for, shall be signed by counsel, and the facts therein stated, if not apparent on the record, shall be verified by the oath of the party or by some other person. No rehearing shall be granted after the term at which the final decree of the court shall have been entered and recorded, if an appeal lies to the Supreme Court. But if no appeal lies, the petition may be admitted at any time before the end of the next term of the court, in the discretion of the court.

Rule 89.

The circuit courts (both judges concurring therein) may make any other and further rules and regulations for the practice, proceedings, and process, *mesne* and final, in their respective districts, not inconsistent with the rules hereby prescribed, in their discretion, and from time to time alter and amend the same.

Rule 90.

In all cases where the rules prescribed by this court or by the circuit court do not apply, the practice of the circuit court shall be regulated by the present practice of the high court of chancery in England, so far as the same may reasonably be applied consistently with the local circumstances and local conveniences of the district where the court is held, not as positive rules, but as furnishing just analogies to regulate the practice.

Rule 91.

Whenever, under these rules, an oath is or may be required to be taken, the party may, if conscientiously scrupulous of taking an oath, in lieu thereof make solemn affirmation to the truth of the facts stated by him.

DECEMBER TERM, 1863.

Rule 92.

Ordered, That in suits in equity for the foreclosure of mortgages in the circuit courts of the United States, or in any court of the Territories having jurisdiction of the same, a decree may be rendered for any balance that may be found due to the complainant over and above the proceeds of the sale or sales, and execution may issue for the collection of the same, as is provided in the eighth rule of this court regulating the equity practice, where the decree is solely for the payment of money.

OCTOBER TERM, 1878.

INJUNCTIONS.

Rule 93.

When an appeal from a final decree, in an equity suit, granting or dissolving an injunction, is allowed by a justice or judge who took part in the decision of the cause, he may, in his discretion, at the time of such allowance, make an order suspending or modifying the injunction during the pendency of the appeal, upon such terms as to bond or otherwise as he may consider proper for the security of the rights of the opposite party.

OCTOBER TERM, 1881.

Rule 94.

Every bill brought by one or more stockholders in a corporation, against the corporation and other parties, founded on rights which may properly be asserted by the corporation, must be verified by oath, and must contain an allegation that the plaintiff was a shareholder at the time of the transaction of which he complains, or that his share had devolved on him since, by operation of law, and that the suit is not a collusive one to confer on a court of the United States jurisdiction of a case of which it would not otherwise have cognizance. It must also set forth with particularity the efforts of the plaintiff to secure such action as he desires on the part of the managing directors or trustees, and, if necessary, of the shareholders, and the causes of his failure to obtain such action.

The following provisions relating to equity practice are to be found in the act of 1st of June, 1872:

SEC. 7. That whenever notice is given of a motion for an injunction, out of a circuit or district court of the United States, the court or judge thereof may, if there appear to be danger of irreparable injury from delay, grant an order restraining the act sought to be enjoined until the decision upon the motion. Such order may be granted with or without security, in the discretion of the court or judge: *Provided*, That no justice of the Supreme Court shall hear or allow any application for an injunction or restraining order except within the circuit to which he is allotted, and in causes pending in the circuit to which he is allotted, or in such causes at such place outside of the circuit as the parties may in writing stipulate, except in causes where such application cannot be heard by the circuit judge of the circuit, or the district judge of the district.

SEC. 13. That when in any suit in equity, commenced in any court in the United States, to enforce any legal or equitable lien or claim against real or personal property within the district where such suit is brought, one or more of the defendants therein shall not be an inhabitant of or found within the said district, or shall not voluntarily appear thereto, it shall be lawful for the court to make an order directing such absent defendant to appear, plead, answer, or demur to the complainant's bill at a certain day therein to be designated, which order shall be served on such absent defendant, if practicable, wherever found; or where such personal service is not practicable, such order shall be published in such a manner as the court shall direct; and in case such absent defendant shall not appear, plead, answer, or demur within the time so limited, or within some further time to be allowed by the court, in its discretion, and upon proof of the service or publication of said order, and of the performance of the directions contained in the same, it shall be lawful for the court to entertain jurisdiction, and proceed to the hearing and adjudication of such suit in the same manner as if such absent defendant had been served with process within the said district; but said adjudication shall, as regards such absent defendant without appearance, affect his property within such district only.

IV.

FEDERAL STATUTES

ESPECIALLY RELATING TO THE POWER OF THE

SUPREME COURT OF THE UNITED STATES,

TO

REGULATE THE PRACTICE

TO BE USED IN ADMIRALTY AND MARITIME CASES,

BY THE

CIRCUIT AND DISTRICT COURTS OF THE UNITED STATES,

AND THE

RULES OF PRACTICE

ADOPTED BY THE

SUPREME COURT OF THE UNITED STATES,

FOR THE

COURTS OF THE UNITED STATES,

In Admiralty and Maritime Jurisdiction, on the Instance Side of the Court,
in pursuance of the Act of 23d of August, 1842, chapter 188.

FEDERAL STATUTES

ESPECIALLY RELATING TO

THE POWER OF THE SUPREME COURT

TO REGULATE THE PRACTICE

TO BE USED IN ADMIRALTY AND MARITIME CASES BY THE
CIRCUIT AND DISTRICT COURTS OF THE UNITED STATES.

SEC. 913. The forms of mesne process and the forms and modes of proceeding in suits of equity and of admiralty and maritime jurisdiction in the circuit and district courts shall be according to the principles, rules, and usages which belong to courts of equity and of admiralty, respectively, except when it is otherwise provided by statute or by rules of court made in pursuance thereof; but the same shall be subject to alteration and addition by the said courts, respectively, and to regulation by the Supreme Court, by rules prescribed, from time to time, to any circuit or district court, not inconsistent with the laws of the United States.

Revised Statutes (Second Edition), § 913, p. 174; Act of Congress of 29th Sept., 1789, ch. 21, sec. 2, 1 Stat. at Large, 93; Act of Congress of 8th May, 1792, ch. 36, sec. 2, 1 Stat. at Large, 276; Act of Congress of 19th May, 1828, ch. 68, sec. 1, 4 Stat. at Large, 278; Act of Congress of 1st August, 1842, ch. 109, 5 Stat. at Large, 499.

SEC. 917. The Supreme Court shall have power to prescribe, from time to time, and in any manner not inconsistent with any law of the United States, the forms of writs and other process, the modes of framing and filing proceedings and pleadings, of taking and obtaining evidence, of obtaining discovery, of proceeding to obtain relief, of drawing up, entering, and enrolling decrees, and of proceeding before trustees appointed by the court, and generally to regulate the whole practice, to be used, in suits in equity or admiralty, by the circuit and district courts.

Revised Statutes (Second Edition), § 917, p. 175; Act of Congress of 23d of August, 1842, ch. 188, sec. 6, 5 Stat. at Large, 518.

See also Act of Congress of 3d March, 1851, referred to immediately before Rule 54, ch. 43, 9 Stat. at Large, 635, of which act sections 1, 3, 4, 5, 6 and 7, will be found embodied in the following sections of the Revised Statutes (Second Edition), viz., § § 4282-4289 inclusive, p. 827.

RULES OF PRACTICE

ADOPTED BY THE

SUPREME COURT OF THE UNITED STATES

FOR THE COURTS OF THE UNITED STATES

IN ADMIRALTY AND MARITIME JURISDICTION,
ON THE INSTANCE SIDE OF THE COURT, IN
PURSUANCE OF THE ACT OF THE 23^d OF
AUGUST, 1842, CHAPTER 188.

Rule 1.

No *mesne* process shall issue from the district courts in any civil cause of admiralty and maritime jurisdiction until the libel, or libel of information, shall be filed in the clerk's office from which such process is to issue. All process shall be served by the marshal or by his deputy, or, where he or they are interested, by some discreet and disinterested person appointed by the court.

Rule 2.

In suits *in personam*, the *mesne* process may be by a simple warrant of arrest of the person of the defendant, in the nature of a *capias*, or by a warrant of arrest of the person of the defendant, with a clause therein, that if he cannot be found, to attach his goods and chattels to the amount sued for; or if such property cannot be found, to attach his credits and effects to the amount sued for in the hands of the garnishees named therein; or by a simple monition, in the nature of a summons to appear and answer to the suit, as the libellant shall, in his libel or information, pray for or elect.

Rule 3.

In all suits *in personam*, where a simple warrant of arrest issues and is executed, the marshal may take bail, with sufficient sureties, from the party arrested, by bond or stipulation, upon condition that he will appear in the suit and abide by all orders of the court, interlocutory or final, in the cause, and pay the money awarded by the final decree rendered therein in the court to which the process is returnable, or in any appellate court. And upon such bond or stipulation, summary process of execution may and shall be issued against the principal and sureties by the court to which such process is returnable, to enforce the final decree so rendered, or upon appeal by the appellate court.

Rule 4.

In all suits *in personam*, where goods and chattels, or credits and effects, are attached under such warrant authorizing the same, the attachment may be dissolved by order of the court to which the same warrant is returnable, upon the defendant whose property is so attached giving a bond or stipulation, with sufficient sureties, to abide by all orders, interlocutory or final, of the court, and pay the amount awarded by the final decree rendered in the court to which the process is returnable, or in any appellate court; and upon such bond or stipulation, summary process of execution shall and may be issued against the principal and sureties by the court to which such warrant is returnable, to enforce the final decree so rendered, or upon appeal by the appellate court.

Rule 5.

Bonds or stipulations in admiralty suits may be given and taken in open court, or at chambers, or before any commissioner of the court who is authorized by the court to take affidavits of bail and depositions in cases pending before the court, or any commissioner of the United States authorized by law to take bail and affidavits in civil cases.

Rule 6.

In all suits *in personam*, where bail is taken, the court may, upon motion, for due cause shown, reduce the amount of the

sum contained in the bond or stipulation therefor; and in all cases where a bond or stipulation is taken as bail, or upon dissolving an attachment of property as aforesaid, if either of the sureties shall become insolvent pending the suit, new sureties may be required by the order of the court, to be given, upon motion, and due proof thereof.

Rule 7.

In suits *in personam*, no warrant of arrest, either of the person or property of the defendant, shall issue for a sum exceeding five hundred dollars, unless by the special order of the court, upon affidavit or other proper proof showing the propriety thereof.

Rule 8.

In all suits *in rem* against a ship, her tackle, sails, apparel, furniture, boats, or other appurtenances, if such tackle, sails, apparel, furniture, boats, or other appurtenances are in the possession or custody of any third person, the court may, after a due monition to such third person, and a hearing of the cause, if any, why the same should not be delivered over, award and decree that the same be delivered into the custody of the marshal or other proper officer, if, upon the hearing, the same is required by law and justice.

Rule 9.

In all cases of seizure, and in other suits and proceedings *in rem*, the process, unless otherwise provided for by statute, shall be by a warrant of arrest of the ship, goods, or other thing to be arrested; and the marshal shall thereupon arrest and take the ship, goods, or other thing into his possession for safe custody, and shall cause public notice thereof and of the time assigned for the return of such process and the hearing of the cause, to be given in such newspaper within the district as the district court shall order; and if there is no newspaper published therein, then in such other public places in the district as the court shall direct.

Rule 10.

In all cases where any goods or other things are arrested, if

the same are perishable, or are liable to deterioration, decay, or injury, by being detained in custody pending the suit, the court may, upon the application of either party, in its discretion, order the same or so much thereof to be sold as shall be perishable or liable to depreciation, decay, or injury; and the proceeds, or so much thereof as shall be a full security to satisfy in decree, to be brought into court to abide the event of the suit; or the court may, upon the application of the claimant, order a delivery thereof to him, upon a due appraisement, to be had under its direction, either upon the claimant's depositing in court so much money as the court shall order, or upon his giving a stipulation, with sureties, in such sum as the court shall direct, to abide by and pay the money awarded by the final decree rendered by the court, or the appellate court, if any appeal intervenes, as the one or the other course shall be ordered by the court.

Rule 11.

In like manner, where any ship shall be arrested, the same may, upon the application of the claimant, be delivered to him upon a due appraisement, to be had under the direction of the court, upon the claimant's depositing in court so much money as the court shall order, or upon his giving a stipulation, with sureties, as aforesaid; and if the claimant shall decline any such application, then the court may, in its discretion, upon the application of either party, upon due cause shown, order a sale of such ship, and the proceeds thereof to be brought into court or otherwise disposed of, as it may deem most for the benefit of all concerned.

Rule 12.

In all suits by material men for supplies or repairs, or other necessities, the libellant may proceed against the ship and freight *in rem*, or against the master or owner alone *in personam*.

Rule 13.

In all suits for mariners' wages, the libellant may proceed against the ship, freight, and master, or against the ship and freight, or against the owner or the master alone *in personam*.

Rule 14.

In all suits for pilotage the libellant may proceed against the ship and master, or against the ship, or against the owner alone or the master alone *in personam*.

Rule 15.

In all suits for damage by collision, the libellant may proceed against the ship and master, or against the ship alone or against the master or the owner alone *in personam*.

Rule 16.

In all suits for an assault or beating on the high seas, or elsewhere within the admiralty and maritime jurisdiction, the suit shall be *in personam* only.

Rule 17.

In all suits against the ship or freight, founded upon a mere maritime hypothecation, either express or implied, of the master, for moneys taken up in a foreign port for supplies or repairs or other necessities for the voyage, without any claim of marine interest, the libellant may proceed either *in rem*, or against the master or the owner alone *in personam*.

Rule 18.

In all suits on bottomry bonds, properly so called, the suit shall be *in rem* only against the property hypothecated, or the proceeds of the property, in whosoever hands the same may be found, unless the master has, without authority, given the bottomry bond, or by his fraud or misconduct has avoided the same, or has subtracted the property, or unless the owner has, by his own misconduct or wrong, lost or subtracted the property, in which latter cases the suit may be *in personam* against the wrong-doer:

Rule 19.

In all suits for salvage, the suit may be *in rem* against the property saved, or the proceeds thereof, or *in personam* against the party at whose request and for whose benefit the salvage service has been performed.

Rule 20.

In all petitory and possessory suits between part owners or adverse proprietors, or by the owners of a ship, or the majority thereof, against the master of a ship, for the ascertainment of the title and delivery of the possession, or for the possession only, or by one or more part owners against the others to obtain security for the return of the ship from any voyage undertaken without their consent, or by one or more part owners against the others to obtain possession of the ship for any voyage, upon giving security for the safe return thereof, the process shall be by an arrest of the ship, and by a monition to the adverse party or parties to appear and make answer to the suit.

Rule 21.

In all cases of a final decree for the payment of money, the libellant shall have a writ of execution, in the nature of a *fieri facias*, commanding the marshal or his deputy to levy and collect the amount thereof out of the goods and chattels, lands and tenements, or other real estate, of the defendant or stipulators.

Rule 22.

All informations and libels of information upon seizures for any breach of the revenue, or navigation, or other laws of the United States, shall state the place of seizure, whether it be on land or on the high seas, or on navigable waters within the admiralty and maritime jurisdiction of the United States, and the district within which the property is brought and where it then is. The information or libel of information shall also propound in distinct articles the matters relied on as grounds or causes of forfeiture, and aver the same to be contrary to the form of the statute or statutes of the United States in such case provided, as the case may require, and shall conclude with a prayer of due process to enforce the forfeiture, and to give notice to all persons concerned in interest to appear and show cause at the return-day of the process why the forfeiture should not be decreed.

Rule 23.

All libels in instance causes, civil or maritime, shall state the

nature of the cause; as, for example, that it is a cause, civil and maritime, of contract, or of tort or damage, or of salvage, or of possession, or otherwise, as the case may be; and if the libel be *in rem*, that the property is within the district; and, if *in personam*, the names and occupations and places of residence of the parties. The libel shall also propound and articulate in distinct articles the various allegations of fact upon which the libellant relies in support of his suit, so that the defendant may be enabled to answer distinctly and separately the several matters contained in each article; and it shall conclude with a prayer of due process to enforce his rights, *in rem* or *in personam* (as the case may require), and for such relief and redress as the court is competent to give in the premises. And the libellant may further require the defendant to answer on oath all interrogatories propounded by him touching all and singular the allegations in the libel at the close or conclusion thereof.

Rule 24.

In all informations and libels in causes of admiralty and maritime jurisdiction, amendments in matters of form may be made at any time, on motion to the court, as of course. And new counts may be filed, and amendments in matters of substance may be made, upon motion, at any time before the final decree, upon such terms as the court shall impose. And where any defect of form is set down by the defendant upon special exceptions, and is allowed, the court may, in granting leave to amend, impose terms upon the libellant.

Rule 25.

In all cases of libels *in personam*, the court may, in its discretion, upon the appearance of the defendant, where no bail has been taken, and no attachment of property has been made to answer the exigency of the suit, require the defendant to give a stipulation, with sureties, in such sum as the court shall direct, to pay all costs and expenses which shall be awarded against him in the suit, upon the final adjudication thereof, or by any interlocutory order in the progress of the suit.

Rule 26.

In suits *in rem*, the party claiming the property shall verify

his claim on oath or solemn affirmation, stating that the claimant by whom or on whose behalf the claim is made is the true and *bona fide* owner, and that no other person is the owner thereof. And where the claim is put in by an agent or consignee, he shall also make oath that he is duly authorized thereto by the owner; or if the property be, at the time of the arrest, in the possession of the master of a ship, that he is the lawful bailee thereof for the owner. And, upon putting in such claim, the claimant shall file a stipulation, with sureties, in such sum as the court shall direct, for the payment of all costs and expenses which shall be awarded against him by the final decree of the court, or, upon an appeal, by the appellate court.

Rule 27.

In all libels in causes of civil and maritime jurisdiction, whether *in rem* or *in personam*, the answer of the defendant to the allegations in the libel shall be on oath or solemn affirmation; and the answer shall be full and explicit and distinct to each separate article and separate allegation in the libel, in the same order as numbered in the libel, and shall also answer in like manner each interrogatory propounded at the close of the libel.

Rule 28.

The libellant may except to the sufficiency, or fullness, or distinctness, or relevancy of the answer to the articles and interrogatories in the libel; and, if the court shall adjudge the same exceptions, or any of them, to be good and valid, the court shall order the defendant forthwith, within such time as the court shall direct, to answer the same, and may further order the defendant to pay such costs as the court shall adjudge reasonable.

Rule 29.

If the defendant shall omit or refuse to make due answer to the libel upon the return-day of the process, or other day assigned by the court, the court shall pronounce him to be in contumacy and default; and thereupon the libel shall be adjudged to be taken *pro confesso* against him, and the court shall

proceed to hear the cause *ex parte*, and adjudge therein as to law and justice shall appertain. But the court may, in its discretion, set aside the default, and, upon the application of the defendant, admit him to make answer to the libel, at any time before the final hearing and decree, upon his payment of all the costs of the suit up to the time of granting leave therefor.

Rule 30.

In all cases where the defendant answers, but does not answer fully and explicitly and distinctly to all the matters in any article of the libel, and exception is taken thereto by the libellant, and the exception is allowed, the court may, by attachment, compel the defendant to make further answer thereto, or may direct the matter of the exception to be taken *pro confesso* against the defendant, to the full purport and effect of the article to which it purports to answer, and as if no answer had been put in thereto.

Rule 31.

The defendant may object, by his answer, to answer any allegation or interrogatory contained in the libel which will expose him to any prosecution or punishment for crime, or for any penalty or any forfeiture of his property for any penal offence.

Rule 32.

The defendant shall have a right to require the personal answer of the libellant upon oath or solemn affirmation to any interrogatories which he may, at the close of his answer, propound to the libellant touching any matters charged in the libel, or touching any matter of defence set up in the answer, subject to the like exception as to matters which shall expose the libellant to any prosecution or punishment, or forfeiture, as is provided in the thirty-first rule. In default of due answer by the libellant to such interrogatories, the court may adjudge the libellant to be in default, and dismiss the libel, or may compel his answer in the premises, by attachment, or take the subject-matter of the interrogatory *pro confesso* in favor of the defendant, as the court, in its discretion, shall deem most fit to promote public justice.

Rule 33.

Where either the libellant or the defendant is out of the country, or unable, from sickness or other casualty, to make an answer to any interrogatory on oath or solemn affirmation at the proper time, the court may, in its discretion, in furtherance of the due administration of justice, dispense therewith, or may award a commission to take the answer of the defendant when and as soon as it may be practicable.

Rule 34.

If any third person shall intervene in any cause of admiralty and maritime jurisdiction *in rem* for his own interest, and he is entitled, according to the cause of admiralty proceedings, to be heard for his own interest therein, he shall propound the matter in suitable allegations, to which, if admitted by the court, the other party or parties in the suit may be required, by order of the court, to make due answer; and such further proceedings shall be had and decree rendered by the court therein as to law and justice shall appertain. But every such intervenor shall be required, upon filing his allegations, to give a stipulation, with sureties, to abide by the final decree rendered in the cause, and to pay all such costs and expenses and damages as shall be awarded by the court upon the final decree, whether it is rendered in the original or appellate court.

Rule 35.

The stipulations required by the last preceding rule, or on appeal, or in any other admiralty or maritime proceeding, shall be given and taken in the manner prescribed by rule fifth as amended.

Rule 36.

Exceptions may be taken to any libel, allegation, or answer for surplusage, irrelevancy, impertinence, or scandal; and if, upon reference to a master, the exception shall be reported to be so objectionable, and allowed by the court, the matter shall be expunged, at the cost and expense of the party in whose libel or answer the same is found.

Rule 37.

In cases of foreign attachment, the garnishee shall be required to answer on oath or solemn affirmation as to the debts, credits, or effects of the defendant in his hands, and to such interrogatories touching the same as may be propounded by the libellant; and if he shall refuse or neglect to so do, the court may award compulsory process *in personam* against him. If he admits any debts, credits, or effects, the same shall be held in his hands, liable to answer the exigency of the suit.

Rule 38.

In cases of mariners' wages, or bottomry, or salvage, or other proceedings *in rem*, where freight or other proceeds of property are attached to or are bound by the suit, which are in the hands or possession of any person, the court may, upon due application, by petition of the party interested, require the party charged with the possession thereof to appear and show cause why the same should not be brought into court to answer the exigency of the suit; and if no sufficient cause be shown, the court may order the same to be brought into court to answer the exigency of the suit, and, upon failure of the party to comply with the order, may award an attachment, or other compulsive process, to compel obedience thereto.

Rule 39.

If, in any admiralty suit, the libellant shall not appear and prosecute his suit, according to the course and orders of the court, he shall be deemed in default and contumacy; and the court may, upon the application of the defendant, pronounce the suit to be deserted, and the same may be dismissed with costs.

Rule 40.

The court may, in its discretion, upon the motion of the defendant and the payment of costs, rescind the decree in any suit in which, on account of his contumacy and default, the matter of the libel shall have been decreed against him, and grant a rehearing thereof at any time within ten days after the decree has been entered, the defendant submitting to such further orders and terms in the premises as the court may direct.

Rule 41.

All sales of property under any decree of admiralty shall be made by the marshal or his deputy, or other proper officer assigned by the court, where the marshal is a party in interest, in pursuance of the orders of the court ; and the proceeds thereof, when sold, shall be forthwith paid into the registry of the court by the officer making the sale, to be disposed of by the court according to law.

Rule 42.

All moneys paid into the registry of the court shall be deposited in some bank designated by the court, and shall be so deposited in the name of the court, and shall not be drawn out, except by a check or checks, signed by a judge of the court and countersigned by the clerk, stating on whose account and for whose use it is drawn, and in what suit and out of what fund in particular it is paid. The clerk shall keep a regular book, containing a memorandum and copy of all the checks so drawn and the date thereof.

Rule 43.

Any person having an interest in any proceeds in the registry of the court shall have a right, by petition and summary proceedings, to intervene *pro interesse suo* for a delivery thereof to him ; and upon due notice to the adverse parties, if any, the court shall and may proceed summarily to hear and decide thereon, and to decree therein according to law and justice. And if such petition or claim shall be deserted, or, upon a hearing, be dismissed, the court may, in its discretion, award costs against the petitioner in favor of the adverse party.

Rule 44.

In cases where the court shall deem it expedient or necessary for the purposes of justice, the court may refer any matters arising in the progress of the suit to one or more commissioners, to be appointed by the court, to hear the parties and make report therein. And such commissioner or commissioners shall have and possess all the powers in the premises which are usually given to or exercised by masters in chancery in reference to them, including the power to administer oaths

to and to examine the parties and witnesses touching the premises.

Rule 45.

All appeals from the district to the circuit court must be made while the court is sitting, or within such other period as shall be designated by the district court by its general rules, or by an order specially made in the particular suit; or in case no such rule or order be made, then within thirty days from the rendering of the decree.

Rule 46.

In all cases not provided for by the foregoing rules, the district and circuit courts are to regulate the practice of the said courts respectively, in such manner as they shall deem most expedient for the due administration of justice in suits in admiralty.

Rule 47.

In all suits *in personam*, where a simple warrant of arrest issues and is executed, bail shall be taken by the marshal and the court in those cases only in which it is required by the laws of the State where an arrest is made upon similar or analogous process issuing from the State courts.

And imprisonment for debt, on process issuing out of the admiralty court, is abolished in all cases where, by the laws of the State in which the court is held, imprisonment for debt has been, or shall be hereafter, abolished, upon similar or analogous process issuing from a State court.

Rule 48.

The twenty-seventh rule shall not apply to cases where the sum or value in dispute does not exceed fifty dollars, exclusive of costs, unless the district court shall be of opinion that the proceedings prescribed by that rule are necessary for the purposes of justice in the case before the court.

All rules and parts of rules heretofore adopted, inconsistent with this order, are hereby repealed and annulled.

Rule 49.

Further proof, taken in a circuit court upon an admiralty

appeal, shall be by deposition, taken before some commissioner appointed by a circuit court, pursuant to the acts of Congress in that behalf, or before some officer authorized to take depositions by the thirtieth section of the act of Congress of the 24th of September, 1789, upon an oral examination and cross-examination, unless the court in which such appeal shall be pending, or one of the judges thereof, shall, upon motion, allow a commission to issue to take such depositions upon written interrogatories and cross-interrogatories. When such deposition shall be taken by oral examination, a notification from the magistrate before whom it is to be taken, or from the clerk of the court in which such appeal shall be pending, to the adverse party, to be present at the taking of the same, and to put interrogatories, if he think fit, shall be served on the adverse party or his attorney, allowing time for their attendance after being notified not less than twenty-four hours, and, in addition thereto, one day, Sundays exclusive, for every twenty miles' travel; provided, that the court in which such appeal may be pending, or either of the judges thereof, may, upon motion, increase or diminish the length of notice above required.

Rule 50.

When oral evidence shall be taken down by the clerk of the district court, pursuant to the above mentioned section of the act of Congress, and shall be transmitted to the circuit court, the same may be used in evidence on the appeal, saving to each party the right to take the depositions of the same witnesses, or either of them, if he should so elect.

Rule 51.

When the defendant, in his answer, alleges new facts, these shall be considered as denied by the libellant, and no replication, general or special, shall be allowed. But within such time after the answer is filed as shall be fixed by the district court, either by general rule or by special order, the libellant may amend his libel so as to confess and avoid, or explain or add to, the new matters set forth in the answer; and within such time as may be fixed, in like manner, the defendant shall answer such amendments.

Rule 52.

The clerks of the district courts shall make up the records to be transmitted to the circuit courts on appeals, so that the same shall contain the following :

1. The style of the court.
2. The names of the parties, setting forth the original parties, and those who have become parties before the appeal, if any change has taken place.
3. If bail was taken, or property was attached or arrested, the process of the arrest or attachment and the service thereof ; all bail and stipulations ; and, if any sale has been made, the orders, warrants, and reports relating thereto.
4. The libel, with exhibits annexed thereto.
5. The pleadings of the defendant, with the exhibits annexed thereto.
6. The testimony on the part of the libellant, and any exhibits not annexed to the libel.
7. The testimony on the part of the defendant, and any exhibits not annexed to his pleadings.
8. Any order of the court to which exception was made.
9. Any report of an assessor or assessors, if excepted to, with the orders of the court respecting the same, and the exceptions to the report. If the report was not excepted to, only the fact that a reference was made, and so much of the report as shows what results were arrived at by the assessor, are to be stated.
10. The final decree.
11. The prayer for an appeal, and the action of the district court thereon ; and no reasons of appeal shall be filed or inserted in the transcript.

The following shall be omitted :

1. The continuances.
2. All motions, rules, and orders not excepted to which are merely preparatory for trial.
3. The commissions to take depositions, notices therefor, their captions, and certificates of their being sworn to, unless some exception to a deposition in the district court was founded on some one or more of these ; in which case, so much of either of them as may be involved in the exception shall be set out.

In all other cases it shall be sufficient to give the name of the witness, and to copy the interrogatories and answers, and to state the name of the commissioner, and the place where and the date when the deposition was sworn to ; and, in copying all depositions taken on interrogatories, the answer shall be inserted immediately following the question.

2. The clerk of the district court shall page the copy of the record thus made up, and shall make an index thereto, and he shall certify the entire document, at the end thereof, under the seal of the court, to be a transcript of the record of the district court in the cause named at the beginning of the copy made up pursuant to this rule ; and no other certificate of the record shall be needful or inserted.

3. Hereafter, in making up the record to be transmitted to the circuit court on appeal, the clerk of the district court shall omit therefrom any of the pleading, testimony, or exhibits which the parties by their proctors shall by written stipulation agree may be omitted ; and such stipulation shall be certified up with the record.

Rule 53.

Whenever a cross-libel is filed upon any counter-claim, arising out of the same cause of action for which the original libel was filed, the respondents in the cross-libel shall give security in the usual amount and form, to respond in damages, as claimed in said cross-libel, unless the court, on cause shown, shall otherwise direct ; and all proceedings upon the original libel shall be stayed until such security shall be given.

Supplementary rules of practice in admiralty, under the act of March 3, 1851, entitled "An act to limit the liability of ship-owners, and for other purposes."

Rule 54.

When any ship or vessel shall be libeled, or the owner or owners thereof shall be sued, for any embezzlement, loss, or destruction by the master, officers, mariners, passengers, or any other person or persons, of any property, goods, or merchandise, shipped or put on board of such ship or vessel, or for any loss, damage, or injury by collision, or for any act, mat-

ter, or thing, loss, damage, or forfeiture done, occasioned, or incurred, without the privity or knowledge of such owner or owners, and he or they shall desire to claim the benefit of limitation of liability provided for in the third and fourth sections of the said act above recited, the said owner or owners shall and may file a libel or petition in the proper district court of the United States, as hereinafter specified, setting forth the facts and circumstances on which such limitation of liability is claimed, and praying proper relief in that behalf; and thereupon said court, having caused due appraisement to be had of the amount or value of the interest of said owner or owners, respectively, in such ship or vessel, and her freight, for the voyage, shall make an order for the payment of the same into court, or for the giving of a stipulation, with sureties, for payment thereof into court whenever the same shall be ordered; or, if the said owner or owners shall so elect, the said court shall, without such appraisement, make an order for the transfer by him or them of his or their interest in such vessel and freight, to a trustee to be appointed by the court under the fourth section of said act; and, upon compliance with such order, the said court shall issue a monition against all persons claiming damages for any such embezzlement, loss, destruction, damage, or injury, citing them to appear before the said court and make due proof of their respective claims at or before a certain time to be named in said writ, not less than three months from the issuing of the same; and public notice of such monition shall be given as in other cases, and such further notice reserved through the post-office, or otherwise, as the court, in its discretion, may direct; and the said court shall also, on the application of the said owner or owners, make an order to restrain the further prosecution of all and any suit or suits against said owner or owners in respect of any such claim or claims.

Rule 55.

Proof of all claims which shall be presented in pursuance of said monition shall be made before a commissioner, to be designated by the court, subject to the right of any person interested to question or controvert the same; and, upon the completion of said proofs, the commissioner shall make report

of the claims so proven, and upon confirmation of said report, after hearing any exceptions thereto, the moneys paid or secured to be paid into court as aforesaid, or the proceeds of said ship or vessel and freight (after payment of costs and expense), shall be divided *pro rata* amongst the several claimants, in proportion to the amount of their respective claims, duly proved and confirmed as aforesaid, saving, however, to all parties any priority to which they may be legally entitled.

Rule 56.

In the proceedings aforesaid, the said owner or owners shall be at liberty to contest his or their liability, or the liability of said ship or vessel for said embezzlement, loss, destruction, damage, or injury (independently of the limitation of liability claimed under said act), provided that, in his or their libel or petition, he or they shall state the facts and circumstances by reason of which exemption from liability is claimed; and any person or persons claiming damages as aforesaid, and who shall have presented his or their claim to the commissioner under oath, shall and may answer such libel or petition, and contest the right of the owner or owners of said ship or vessel, either to an exemption from liability, or to a limitation of liability under the said act of Congress, or both.

Rule 57.

The said libel or petition shall be filed and the said proceedings had in any district court of the United States in which said ship or vessel may be libeled to answer for any such embezzlement, loss, destruction, damage, or injury; or, if the said ship or vessel be not libeled, then in the district court for any district in which the said owner or owners may be sued in that behalf. If the ship have already been libeled and sold, the proceeds shall represent the same for the purposes of these rules.

Rule 58.

All the preceding rules and regulations for proceeding in cases where the owner or owners of a ship or vessel shall desire to claim the benefit of limitation of liability provided for in the act of Congress in that behalf, shall apply to the circuit

courts of the United States where such cases are or shall be pending in said courts upon appeal from the district courts.

Rule 59.

In a suit for damage by collision, if the claimant of any vessel proceeded against, or any respondent proceeded against *in personam*, shall, by petition, on oath, presented before or at the time of answering the libel, or within such further time as the court may allow, and containing suitable allegations showing fault or negligence in any other vessel contributing to the same collision, and the particulars thereof, and that such other vessel or any other party ought to be proceeded against in the same suit for such damage, pray that process be issued against such vessel or party to that end, such process may be issued, and, if duly served, such suit shall proceed as if such vessel or party had been originally proceeded against ; the other parties in the suit shall answer the petition ; the claimant of such vessel or such new party shall answer the libel ; and such further proceedings shall be had and decree rendered by the court in the suit as to law and justice shall appertain. But every such petitioner shall, upon filing his petition, give a stipulation, with sufficient sureties, to pay to the libellant and to any claimant or new party brought in by virtue of such process, all such costs, damages, and expenses as shall be awarded against the petitioner by the court upon the final decree, whether rendered in the original or appellate court ; and any such claimant or new party shall give the same bonds or stipulations which are required in like cases from parties brought in under process issued on the prayer of a libellant.

V.

FEDERAL STATUTES

RELATING TO THE

CIRCUIT AND DISTRICT COURTS OF THE UNITED STATES,

ESPECIALLY TO THOSE EMBRACED WITHIN THE

SECOND JUDICIAL CIRCUIT,

AND THE

RULES OF THE CIRCUIT AND DISTRICT COURTS

OF THE

UNITED STATES,

EMBRACED WITHIN THE SECOND JUDICIAL CIRCUIT.

FEDERAL STATUTES

RELATING GENERALLY TO

THE PRACTICE IN THE

CIRCUIT AND DISTRICT COURTS

AND THEIR POWER TO MAKE RULES.

SEC. 911. All writs and processes issuing from the courts of the United States shall be under the seal of the court from which they issue, and shall be signed by the clerk thereof. Those issuing from the Supreme Court or a circuit court shall bear teste of the Chief Justice of the United States, or, when that office is vacant, of the associate justice next in precedence, and those issuing from a district court shall bear teste of the judge, or, when that office is vacant, of the clerk thereof. The seals of said courts shall be provided at the expense of the United States.

Revised Statutes (Second Edition), § 911, p. 174.

SEC. 912. All process issued from the courts of the United States shall bear teste from the day of such issue.

Revised Statutes (Second Edition), § 912, p. 174.

SEC. 913. The forms of mesne process and the forms and modes of proceeding in suits of equity and of admiralty and maritime jurisdiction in the circuit and district courts shall be according to the principles, rules, and usages which belong to courts of equity and of admiralty, respectively, except when it is otherwise provided by statute or by rules of court made in pursuance thereof; but the same shall be subject to alteration

and addition by the said courts, respectively, and to regulation by the Supreme Court, by rules prescribed, from time to time, to any circuit or district court, not inconsistent with the laws of the United States.

Revised Statutes (Second Edition), § 913, p. 174.

SEC. 914. The practice, pleadings, and forms and modes of proceeding in civil causes, other than equity and admiralty causes, in the circuit and district courts, shall conform, as near as may be, to the practice, pleadings, and forms and modes of proceeding existing at the time in like causes in the courts of record of the State within which such circuit or district courts are held, any rule of court to the contrary notwithstanding.

Revised Statutes (Second Edition), § 914, p. 174.

SEC. 915. In common-law causes in the circuit and district courts the plaintiff shall be entitled to similar remedies, by attachment or other process, against the property of the defendant, which are now provided by the laws of the State in which such court is held for the courts thereof; and such circuit or district courts may, from time to time, by general rules, adopt such State laws as may be in force in the States where they are held in relation to attachments and other process: *Provided*, That similar preliminary affidavits or proofs, and similar security, as required by such State laws, shall be first furnished by the party seeking such attachment or other remedy.

Revised Statutes (Second Edition); § 915, p. 174.

SEC. 916. The party recovering a judgment in any common-law cause in any circuit or district court, shall be entitled to similar remedies upon the same, by execution or otherwise, to reach the property of the judgment debtor, as are now provided in like causes by the laws of the State in which such court is held, or by any such laws hereafter enacted which may be adopted by general rules of such circuit or district court; and such courts may, from time to time, by general rules, adopt such State laws as may hereafter be in force in such State in relation to remedies upon judgments, as aforesaid, by execution or otherwise.

Revised Statutes (Second Edition), § 916, p. 175.

SEC. 917. The Supremé Court shall have power to prescribe, from time to time, and in any manner not inconsistent with any law of the United States, the forms of writs and other process, the modes of framing and filing proceedings and pleadings, of taking and obtaining evidence, of obtaining discovery, of proceeding to obtain relief, of drawing up, entering, and enrolling decrees, and of proceeding before trustees appointed by the court, and generally to regulate the whole practice, to be used, in suits in equity or admiralty, by the circuit and district courts.

Revised Statutes (Second Edition), § 917, p. 175.

Note.—For the Rules adopted by the Supreme Court of the United States to regulate the practice of the Circuit and District Courts in suits in Equity and Admiralty, see pp. 297 to 349.

SEC. 918. The several circuit and district courts may, from time to time, and in any manner not inconsistent with any law of the United States, or with any rule prescribed by the Supreme Court under the preceding section, make rules and orders directing the returning of writs and processes, the filing of pleadings, the taking of rules, the entering and making up of judgments by default, and other matters in vacation, and otherwise regulate their own practice as may be necessary or convenient for the advancement of justice and the prevention of delay in proceedings.

Revised Statutes (Second Edition), § 918, p. 175.

FEDERAL STATUTES

RELATING GENERALLY TO THE

F E E S

OF

ATTORNEYS, SOLICITORS, PROCTORS, &c., &c.

IN THE

COURTS OF THE UNITED STATES.

SEC. 823. The following and no other compensation shall be taxed and allowed to attorneys, solicitors, and proctors in the courts of the United States, to district attorneys, clerks of the circuit and district courts, marshals, commissioners, witnesses, jurors, and printers in the several States and Territories, except in cases otherwise expressly provided by law. But nothing herein shall be construed to prohibit attorneys, solicitors, and proctors from charging to and receiving from their clients, other than the Government, such reasonable compensation for their services, in addition to the taxable costs, as may be in accordance with general usage in their respective States, or may be agreed upon between the parties.

Revised Statutes (Second Edition), § 823, p. 154.

F E E S OF ATTORNEYS, SOLICITORS, AND PROCTORS.

SEC. 824. On a trial before a jury, in civil or criminal causes or before referees, or on a final hearing in equity or admiralty, a docket fee of twenty dollars: *Provided*, That in cases of admiralty and maritime jurisdiction, where the libellant recovers less than fifty dollars, the docket fee of his proctor shall be but ten dollars.

In cases at law, when judgment is rendered without a jury, ten dollars.

In cases at law, when the cause is discontinued, five dollars.

For scire facias, and other proceedings on recognizances, five dollars.

For each deposition taken and admitted in evidence in a cause, two dollars and fifty cents.

For services rendered in cases removed from a district to a circuit court by a writ of error or appeal, five dollars.

For examination by a district attorney, before a judge or commissioner, of persons charged with crime, five dollars a day for the time necessarily employed.

For each day of his necessary attendance in a court of the United States on the business of the United States, when the court is held at the place of his abode, five dollars; and for his attendance when the court is held elsewhere, five dollars for each day of the term.

For traveling from the place of his abode to the place of holding any court of the United States in his district, or to the place of any examination before a judge or commissioner, of a person charged with crime, ten cents a mile for going and ten cents a mile for returning.

When an indictment for crime is tried before a jury and a conviction is had, the district attorney may be allowed, in addition to the attorney's fees herein provided, a counsel fee, in proportion to the importance and difficulty of the cause, not exceeding thirty dollars.

Revised Statutes (Second Edition), § 824, p. 154.

SEC. 825. There shall be taxed and paid to every district attorney two per centum upon all moneys collected or realized in any suit or proceeding arising under the revenue laws, and conducted by him, in which the United States is a party, which shall be in lieu of all costs and fees in such proceeding.

Revised Statutes (Second Edition), § 825, p. 154.

SEC. 826. No fee shall accrue to any district attorney on any bond left with him for collection, or in a suit commenced on any bond for the renewal of which provision is made by law, unless the party neglects to apply for such re-

newal for more than twenty days after the maturity of the bond.

Revised Statutes (Second Edition), § 826, p. 154.

SEC. 827. When a district attorney appears by direction of the Secretary or Solicitor of the Treasury, on behalf of any officer of the revenue in any suit against such officer, for any act done by him, or for the recovery of any money received by him and paid into the Treasury in the performance of his official duty, he shall receive such compensation as may be certified to be proper by the court in which the suit is brought, and approved by the Secretary of the Treasury.

Revised Statutes (Second Edition), § 827, p. 154. See also, Act of Congress of 20th June, 1874, ch. 328, sec. 3, 18 Stat. at Large, pp. 85, 109.

CLERK'S FEES.

SEC. 828. For issuing and entering every process, commission, summons, capias, execution, warrant, attachment, or other writ, except a writ of venire, or a summons or subpoena for a witness, one dollar.

For issuing a writ of summons or subpoena, twenty-five cents.

For filing and entering every declaration, plea, or other paper, ten cents.

For administering an oath or affirmation, except to a juror, ten cents.

For taking an acknowledgment, twenty-five cents.

For taking and certifying depositions to file, twenty cents for each folio of one hundred words.

For a copy of such deposition furnished to a party on request, ten cents a folio.

For entering any return, rule, order, continuance, judgment, decree, or recognizance, or drawing any bond, or making any record, certificate, return, or report, for each folio, fifteen cents.

For a copy of any entry or record, or of any paper on file, for each folio, ten cents.

For making dockets and indexes, issuing venire, taxing costs, and all other services, on the trial or argument of a cause where issue is joined and testimony given, three dollars.

For making dockets and indexes, taxing costs, and all other services, in a cause where issue is joined, but no testimony is given, two dollars.

For making dockets and indexes, taxing costs, and other services, in a cause which is dismissed or discontinued, or where judgment or decree is made or rendered without issue, one dollar.

For making dockets and taxing costs, in cases removed by writ of error or appeal, one dollar.

For affixing the seal of the court to any instrument, when required, twenty cents.

For every search for any particular mortgage, judgment, or other lien, fifteen cents.

For searching the records of the court for judgments, decrees, or other instruments constituting a general lien on real estate, and certifying the result of such search, fifteen cents for each person against whom such search is required to be made.

For receiving, keeping, and paying out money, in pursuance of any statute or order of court, one per centum on the amount so received, kept, and paid.

For traveling from the office of the clerk, where he is required to reside, to the place of holding any court required by law to be held, five cents a mile for going and five cents for returning, and five dollars a day for his attendance on the court while actually in session.

All books in the offices of the clerks of the circuit and district courts, containing the docket or minute of the judgments, or decrees thereof, shall, during office hours, be open to the inspection of any person desiring to examine the same, without any fees or charge therefor.

Revised Statutes (Second Edition), § 828, p. 155.

MARSHAL'S FEES.

SEC. 829. For service of any warrant, attachment, summons, capias, or other writ, except execution, venire, or a summons or subpoena for a witness, two dollars for each person on whom service is made.

For the keeping of personal property attached on mesne

process, such compensation as the court, on petition setting forth the facts under oath, may allow.

For serving venires and summoning every twelve men as grand or petit jurors, four dollars, or thirty-three and one-third cents each. In States where, by the laws thereof, jurors are drawn by lot, by constables, or other officers of corporate places, the marshal shall receive, for each jury, two dollars for the use of the officers employed in drawing and summoning the jurors and returning each venire, and two dollars for his own services in distributing the venires. But the fees for distributing and serving venires, drawing and summoning jurors by township officers, including the mileage chargeable by the marshal for each service, shall not at any court exceed fifty dollars.

For holding a court of inquiry or other proceedings before a jury, including the summoning of a jury, five dollars.

For serving a writ of subpoena on a witness, fifty cents ; and no further compensation shall be allowed for any copy, summons, or notice for a witness.

For serving a writ of possession, partition, execution, or any final process, the same mileage as is allowed for the service of any other writ, and for making the service, seizing or levying on property, advertising and disposing of the same by sale, set off, or otherwise according to law receiving and paying over the money, the same fees and poundage as are or shall be allowed for similar services to the sheriffs of the States, respectively, in which the service is rendered.

For each bail-bond, fifty cents.

For summoning appraisers, fifty cents each.

For executing a deed prepared by a party or his attorney, one dollar.

For drawing and executing a deed, five dollars.

For copies of writs or papers furnished at the request of any party, ten cents a folio.

For every proclamation in admiralty, thirty cents.

For serving an attachment *in rem* or a libel in admiralty, two dollars.

For the necessary expenses of keeping boats, vessels, or other property attached or libelled in admiralty, not exceeding two dollars and fifty cents a day.

When the debt or claim in admiralty is settled by the parties without a sale of the property, the marshal shall be entitled to a commission of one per centum on the first five hundred dollars of the claim or decree, and one-half of one per centum on the excess of any sum thereof over five hundred dollars: *Provided*, That, when the value of the property is less than the claim, such commission shall be allowed only on the appraised value thereof.

For sale of vessels or other property under process in admiralty, or under the order of a court of admiralty, and for receiving and paying over the money, two and one-half per centum on any sum under five hundred dollars, and one and one-quarter per centum on the excess of any sum over five hundred dollars.

For disbursing money to jurors and witnesses, and for other expenses, two per centum.

For expenses while employed in endeavoring to arrest, under process, any person charged with or convicted of a crime, the sum actually expended, not to exceed two dollars a day, in addition to his compensation for service and travel.

For every commitment or discharge of a prisoner, fifty cents.

For transporting criminals, ten cents a mile for himself and for each prisoner and necessary guard; except in the case provided for in the next paragraph.

For transporting criminals convicted of a crime in any district or Territory where there is no penitentiary available for the confinement of convicts of the United States, to a prison in another district or Territory designated by the Attorney-General, the reasonable actual expense of transportation of the criminals, the marshal, and the guards, and the necessary subsistence and hire.

For attending the circuit and district courts, when both are in session, or either of them when only one is in session, and for bringing in and committing prisoners and witnesses during the term, five dollars a day.

For attending examinations before a commissioner, and bringing in, guarding, and returning prisoners charged with crime, and witnesses, two dollars a day; and for each deputy not exceeding two, necessarily attending, two dollars a day.

For traveling from his residence to the place of holding court, to attend a term thereof, ten cents a mile for going only.

For travel, in going only, to serve any process, warrant, attachment, or other writ, including writs of subpoena in civil or criminal cases, six cents a mile, to be computed from the place where the process is returned to the place of service, or, when more than one person is served therewith, to the place of service which is most remote, adding thereto the extra travel which is necessary to serve it on the others. But when more than two writs of any kind required to be served in behalf of the same party on the same person might be served at the same time, the marshal shall be entitled to compensation for travel on only two of such writs; and to save unnecessary expense, it shall be the duty of the clerk to insert the names of as many witnesses in a cause in such subpoena as convenience in serving the same will permit.

In all cases where mileage is allowed to the marshal he may elect to receive the same or his actual travelling expenses, to be proved on his oath, to the satisfaction of the court.

Revised Statutes (Second Edition), § 829, p. 155.

SEC. 830. There shall be paid to the marshal his fees for services rendered for the United States, for summoning jurors and witnesses in behalf of the United States, and in behalf of any prisoner to be tried for a capital offense, for the maintenance of prisoners of the United States confined in jail for any criminal offense; also, for his reasonable actual expense for the transportation of criminals, and of the marshal and guards, to prisons designated by the Attorney-General, and for hire and subsistence in that behalf, as hereinbefore provided; also, his fees for the commitment or discharge of prisoners; his expenses necessarily incurred for fuel, lights, and other contingencies that may accrue in holding the courts within this district, and providing the books necessary to record the proceedings thereof: *Provided*, That he shall not incur, or be allowed, an expense of more than twenty dollars in any one year for furniture, or fifty dollars for rent of a building and making improvements thereon without first submitting a statement and

estimates to the Attorney-General and getting his instructions in the premises.

Revised Statutes (Second Edition), § 830, p. 157.

SEC. 831. No per diem or other allowance shall be made to any district attorney, clerk of a circuit court, clerk of a district court, marshal or deputy marshal, for attendance at rule-days of a circuit or district court; and when the circuit and district courts sit at the same time no greater per diem or other allowance shall be made to any such officer than for an attendance on one court.

Revised Statutes (Second Edition), § 831, p. 157.

SEC. 832. The marshal of the Supreme Court of the United States shall be entitled to receive for the service of any warrant, attachment, summons, capias, or other writ, except execution, venire, or a summons, or subpcena for a witness, one dollar for each person on whom such service may be made. His fees for all other services shall be the same as are herein allowed to other marshals; but he shall pay into the Treasury of the United States all fees received by him, and render a true account thereof at the close of each term to the Attorney-General.

Revised Statutes (Second Edition), § 832, p. 157.

SEC. 833. Every district attorney, clerk of a district court, clerk of a circuit court, and marshal, shall, on the first days of January and July, in each year, or within thirty days thereafter, make to the Attorney-General, in such form as he may prescribe, a written return for the half year ending on said days, respectively, of all the fees and emoluments of his office, of every name and character, and of all the necessary expenses of his office, including necessary clerk-hire, together with the vouchers for the payment of the same for such last half year. He shall state separately in such returns the fees and emoluments received or payable under the bankrupt act; and every marshal shall state separately therein the fees and emoluments received or payable for services rendered by himself personally, those received or payable for services rendered by each of his deputies, naming him, and the proportion of such fees and

emoluments which, by the terms of his service, each deputy is to receive. Said returns shall be verified by the oath of the officer making them.

Revised Statutes (Second Edition), § 833, p. 157.

SEC. 834. The preceding section shall not apply to the fees and compensation allowed to district attorneys by sections eight hundred and twenty-five and eight hundred and twenty-seven. All other fees, charges, and emoluments to which a district attorney or a marshal may be entitled, by reason of the discharge of the duties of his office, as now or hereafter prescribed by law, or in any case in which the United States will be bound by the judgment rendered therein, whether prescribed by statute or allowed by a court, or any judge thereof, shall be included in the semi-annual return required of said officers by the preceding section.

Revised Statutes (Second Edition), § 834, p. 158.

SEC. 835. No district attorney shall be allowed by the Attorney-General to retain of the fees and emoluments of his office which he is required to include in his semi-annual return, for his personal compensation, over and above the necessary expenses of his office, including necessary clerk-hire, to be audited and allowed by the proper accounting officers of the Treasury Department, a sum exceeding six thousand dollars a year, or exceeding that rate for any time less than a year.

Revised Statutes (Second Edition), § 835, p. 158.

SEC. 836. There shall be paid to the district attorney for the southern district of New York, in addition to his salary, at the rate of six thousand dollars a year, such sum as shall be necessary, together with the costs and fees allowed him by law, to pay such amount as may be fixed by the Attorney-General for the proper expenses of his office. But nothing in this or the preceding section shall forbid the allowance of additional compensation for services in prize causes, as provided in Title "PRIZE."

Revised Statutes (Second Edition), § 836, p. 158.

SEC. 837. The district attorneys and marshals for the districts of Oregon and Nevada shall be entitled to receive, for

the like services, double the fees hereinbefore provided; but neither of them shall be allowed to retain of such fees any sum exceeding the aggregate compensation of such officer as hereinbefore provided.

Revised Statutes (Second Edition), § 837, p. 158.

SEC. 838. It shall be the duty of every district attorney to whom any collector of customs, or of internal revenue, shall report, according to law, any case in which any fine, penalty, or forfeiture has been incurred in the district of such attorney for the violation of any law of the United States relating to the revenue, to cause the proper proceedings to be commenced and prosecuted without delay, for the fines, penalties, and forfeitures in such case provided, unless, upon inquiry and examination, he shall decide that such proceedings cannot probably be sustained, or that the ends of public justice do not require that such proceedings should be instituted; in which case he shall report the facts in customs cases to the Secretary of the Treasury, and in internal revenue cases to the Commissioner of Internal Revenue for their direction. And for the expenses incurred and services rendered in all such cases, the district attorney shall receive and be paid from the Treasury such sum as the Secretary of the Treasury shall deem just and reasonable, upon the certificate of the judge before whom such cases are tried, or disposed of: *Provided*, That the annual compensation of such district attorney shall not exceed the maximum amount prescribed by law, by reason of such allowance and payment.

Revised Statutes (Second Edition), § 838, p. 158.

SEC. 839. No clerk of a district court, or clerk of a circuit court, shall be allowed by the Attorney-General, except as provided in the next section, and in section eight hundred and forty-two to retain of the fees and emoluments of his office, or, in case both of the said clerkships are held by the same person, of the fees and emoluments of the said offices, respectively, for his personal compensation, over and above his necessary office expenses, including necessary clerk-hire, to be audited and allowed by the proper accounting officers of the Treasury, a sum exceeding three thousand five hundred dollars a year for

any such district clerk or for any such circuit clerk, or exceeding that rate for any time less than a year.

Revised Statutes (Second Edition), § 839, p. 158. See also Act of Congress of 3d March, 1883, ch. 143, 22 Stat. at Large, 603, 631, affecting the Clerk of the Supreme Court of the District of Columbia.

SEC. 840. The clerks of the several circuit and district courts in California, Oregon, and Nevada shall be entitled to charge and receive double the fees hereinbefore allowed to clerks, and shall be allowed, respectively, by the Attorney-General, to retain of the fees so received by them, for their personal compensation, over and above the necessary expenses of their offices, including the salaries of deputy clerks, and necessary clerk-hire, to be audited by the proper accounting officers of the Treasury Department, any sum not exceeding seven thousand dollars a year, nor exceeding that rate for any time less than a year: *Provided*, That whenever, in either of the said districts, the same person holds the office of clerk of both the circuit and district courts, he shall be allowed by the Attorney-General to retain for his personal compensation, as aforesaid, only such sum as is herein allowed to be retained by a person holding the office of clerk of only one of the said courts.

Revised Statutes (Second Edition), § 840, p. 159.

SEC. 841. No marshal shall be allowed by the Attorney-General, except as provided in the next section, to retain of the fees and emoluments which he is required to include in his semi-annual return, as aforesaid, for his personal compensation, over and above the necessary expenses of his office, including necessary clerk-hire, to be audited and allowed by the proper accounting officers of the Treasury Department, and a proper allowance to his deputies, any sum exceeding six thousand dollars a year, or exceeding that rate for any time less than a year.

The allowance to any deputy shall in no case exceed three-fourths of the fees and emoluments received or payable for the services rendered by him, and may be reduced below that rate by the Attorney-General, whenever the returns show such rate to be unreasonable.

Revised Statutes (Second Edition), § 841, p. 159.

SEC. 842. Clerks and marshals may be allowed to retain, for

all official services in prize causes, an additional compensation not exceeding in amount one-half of the maximum compensation allowed to them, respectively, by the three preceding sections.

Revised Statutes (Second Edition), § 842, p. 159.

SEC. 843. The allowances for personal compensation of district attorneys, clerks, and marshals, for each calendar year, shall be made from the fees and emoluments of that year, and not otherwise.

Revised Statutes (Second Edition), § 843, p. 159.

SEC. 844. Every district attorney, clerk, and marshal shall, at the time of making his half yearly return to the Attorney-General, pay into the Treasury, or deposit to the credit of the Treasurer, as he may be directed by the Attorney-General, any surplus of the fees and emoluments of his office, which said return shows to exist over and above the compensation and allowances authorized by law to be retained by him.

Revised Statutes (Second Edition), § 844, p. 159.

SEC. 845. In every case where the return of a district attorney, clerk, or marshal shows that a surplus may exist, the Attorney-General shall cause such return to be carefully examined, and the accounts of disbursements to be regularly audited by the proper officer of his Department, and an account to be opened with such officer in proper books to be provided for that purpose.

Revised Statutes (Second Edition), § 845, p. 159.

SEC. 846. The accounts of district attorneys, clerks, marshals, and commissioners of circuit courts shall be examined and certified by the district judge of the district for which they are appointed, before they are presented to the accounting officers of the Treasury Department for settlement. They shall then be subject to revision upon their merits by said accounting officers, as in case of other public accounts: *Provided*, That no accounts of fees or costs paid to any witness or juror, upon the order of any judge or commissioner, shall be so re-examined as to charge any marshal for an erroneous taxation

of such fees or costs. That where the ministerial officers of the United States have or shall incur extraordinary expense in executing the laws thereof, the payment of which is not specifically provided for, the President of the United States is authorized to allow the payment thereof under the special taxation of the district or circuit court of the district in which the said services have been or shall be rendered, to be paid from the appropriation for defraying the expenses of the judiciary.

Revised Statutes (Second Edition), § 846, p. 159.

COMMISSIONER'S FEES.

SEC. 847. For administering an oath, ten cents.

For taking an acknowledgment, twenty-five cents.

For hearing and deciding on criminal charges, five dollars a day for the time necessarily employed.

For attending to a reference in a litigated matter, in a civil cause at law, in equity, or in admiralty, in pursuance of an order of the court, three dollars a day.

For taking and certifying depositions to file, twenty cents for each folio.

For each copy of the same furnished to a party on request, ten cents for each folio.

For issuing any warrant or writ, and for any other service, the same compensation as is allowed to clerks for like services.

For issuing any warrant under the tenth article of the treaty of August nine, one thousand eight hundred and forty-two, between the United States and the Queen of the United Kingdom of Great Britain and Ireland, against any person charged with any crime or offence set forth in said article, two dollars.

For issuing any warrant under the provision of the convention for the surrender of criminals, between the United States and the King of the French, concluded at Washington November nine, one thousand eight hundred and forty-three, two dollars.

For hearing and deciding upon the case of any person charged with any crime or offence, and arrested under the provisions of said treaty, or of said convention, five dollars a day for the time necessarily employed.

For the examination and certificate in cases of applications

for discharge of poor convicts imprisoned for non-payment of a fine or fine and costs, five dollars a day for the time necessarily employed.

Revised Statutes (Second Edition), § 847, p. 160.

WITNESSES' FEES.

SEC. 848. For each day's attendance in court, or before any officer pursuant to law, one dollar and fifty cents, and five cents a mile for going from his place of residence to the place of trial or hearing, and five cents a mile for returning. When a witness is subpoenaed in more than one cause between the same parties, at the same court, only one travel fee and one per diem compensation shall be allowed for attendance. Both shall be taxed in the case first disposed of, after which the per diem attendance fee alone shall be taxed in the other cases in the order in which they are disposed of.

When a witness is detained in prison for want of security for his appearance, he shall be entitled, in addition to his subsistence, to a compensation of one dollar a day.

Revised Statutes (Second Edition), § 848, p. 160.

SEC. 849. No officer of the United States courts, in any State or Territory, or in the District of Columbia, shall be entitled to witness fees for attending before any court or commissioner where he is officiating.

Revised Statutes (Second Edition), § 849, p. 160.

SEC. 850. When any clerk or other officer of the United States is sent away from his place of business as a witness for the Government, his necessary expenses, stated in items and sworn to, in going, returning, and attendance on the court, shall be audited and paid; but no mileage, or other compensation in addition to his salary, shall in any case be allowed.

Revised Statutes (Second Edition), § 850, p. 160.

SEC. 851. There shall be paid to each seaman or other person who is sent to the United States from any foreign port, station, sea, or ocean, by any United States minister, chargé d'affaires, consul, captain, or commander, to give testimony in any criminal case depending in any court of the United States,

such compensation, exclusive of subsistence and transportation, as such court may adjudge to be proper, not exceeding one dollar for each day necessarily employed in such voyage, and in arriving at the place of examination or trial. In fixing such compensation, the court shall take into consideration the condition of said seaman or witness, and whether his voyage has been broken up, to his injury, by his being sent to the United States.

When such seaman or person is transported in an armed vessel of the United States no charge for subsistence or transportation shall be allowed. When he is transported in any other vessel, the compensation for his transportation and subsistence, not exceeding in any case fifty cents a day, may be fixed by the court, and shall be paid to the captain of said vessel accordingly.

Revised Statutes (Second Edition), § 851, p. 161.

JURORS' FEES.

SEC. 852. For actual attendance at any court or courts, and for the time necessarily occupied in going to and returning from the same, three dollars a day during such attendance.

For the distance necessarily travelled from their residence in going to and returning from said court by the shortest practicable route, five cents a mile.

Revised Statutes (Second Edition), § 852, p. 161.

PRINTERS' FEES.

SEC. 853. For publishing any notice, or order, required by law, or the lawful order of any court, Department, Bureau, or other person, in any newspaper, except as mentioned in sections thirty-eight hundred and twenty-three, thirty-eight hundred and twenty-four, and thirty-eight hundred and twenty-five, Title, "PUBLIC PRINTING, ADVERTISEMENTS, AND PUBLIC DOCUMENTS," forty cents per folio for the first insertion, and twenty cents per folio for each subsequent insertion. The compensation herein provided shall include the furnishing of lawful evidence, under oath, of publication, to be made and furnished by the printer or publisher making such publication.

Revised Statutes (Second Edition), § 853, p. 161.

SEC. 854. The term folio, in this chapter, shall mean one hundred words, counting each figure as a word. When there are over fifty and under one hundred words, they shall be counted as one folio; but a less number than fifty words shall not be counted, except when the whole statute, notice, or order contains less than fifty words.

Revised Statutes (Second Edition), § 854, p. 161.

FEEES : HOW PAID AND RECOVERED.

SEC. 855. In cases where the United States are parties, the marshal shall, on the order of the court, to be entered on its minutes, pay to the jurors and witnesses all fees to which they appear by such order to be entitled, which sum shall be allowed him at the Treasury in his accounts.

Revised Statutes (Second Edition), § 855, p. 161.

SEC. 856. The fees of district attorneys, clerks, marshals, and commissioners, in cases where the United States are liable to pay the same, shall be paid on settling their accounts at the Treasury.

Revised Statutes (Second Edition), § 856, p. 161.

SEC. 857. The fees and compensations of the officers and persons hereinbefore mentioned, except those which are directed to be paid out of the Treasury, shall be recovered in like manner as the fees of the officers of the States respectively for like services are recovered.

Revised Statutes (Second Edition), § 857, p. 161.

See also the following Acts of Congress affecting the foregoing sections 823 to 857 of the Revised Statutes in whole or in part, viz.:

Act of Congress of 23d June, 1874, ch. 469, 18 Stat. at Large, 253, relating to Utah.

Act of Congress of 22d February, 1875, ch. 95, entitled "An Act regulating fees and costs and for other purposes," 18 Stat. at Large, 333.

Act of Congress of 26th June, 1876, ch. 147, 19 Stat. at Large, 61.

Act of Congress of 16th June, 1880, ch. 247, 21 Stat. at Large, 290, relating to Colorado.

Act of Congress of 7th August, 1882, ch. 436, 22 Stat. at Large, 344, relating to New Mexico and Arizona.

See also Revised Statutes (Second Edition), § 299, p. 49, § 715, p. 136, § 877, p. 166, § 980, p. 184, § 981, p. 184, and § 1030, p. 191.

THE SECOND JUDICIAL CIRCUIT.

INCLUDES THE STATES OF

VERMONT, CONNECTICUT AND NEW YORK.

See Revised Statutes (Second Edition), § 604, p. 106.

The States of Vermont and Connecticut each constitute one Judicial District.

See Revised Statutes (Second Edition), §§ 530, 531, p. 89.

The State of New York is divided into the following Districts :

Southern District of New York.

Eastern District of New York.

Northern District of New York.

See Revised Statutes (Second Edition), §§ 530, 541 and 542, pp. 89, 91.

There is one Circuit Judge for the entire Circuit.

See Revised Statutes (Second Edition), § 607, p. 107.

An Associate Justice of the Supreme Court is also allotted to the Circuit and must attend at least one term of the Circuit Court in each district of the Circuit during every period of two years.

See Revised Statutes (Second Edition), §§ 605, 606 and 610, p. 107.

There is a Circuit and a District Court established for each of the Districts within the Circuit, and the Circuit Courts may be held at the same time in the different Districts in the same Circuit.

See Revised Statutes (Second Edition), §§ 551, 608, 612, pp. 93, 107.

There is one District Judge for each District within the Circuit.

See Revised Statutes (Second Edition), § 551, p. 93.

Circuit Courts are held by the Circuit Justice, or by the Circuit Judge of the Circuit, or by the District Judge of the District sitting alone, or by any two of the said Judges sitting together.

See Revised Statutes (Second Edition), § 609, p. 107.

Cases may be heard and tried by each of the Judges holding a Circuit Court sitting apart, by direction of the presiding Justice or Judge, who shall designate the business to be done by each.

See Revised Statutes (Second Edition), § 611, p. 107.

Criminal terms of the Circuit Court in the Southern District of New York may be held by the Circuit Judge and the District Judges for the Southern and Eastern Districts of New York, or any one of them.

See Revised Statutes (Second Edition), § 613, p. 107.

For the jurisdiction of the CIRCUIT COURTS generally, see Revised Statutes (Second Edition), "Title XIII., Chapter Seven—Circuit Court—Jurisdiction," §§ 629 to 657, pp. 109 to 120, and especially respecting appeals and writs of error from the District to the Circuit Courts of the United States, see §§ 631, 633, and 635, Revised Statutes (Second Edition), p. 113.

JURISDICTION

OF THE

CIRCUIT AND DISTRICT COURTS OF THE UNITED STATES

EMBRACED WITHIN THE SECOND JUDICIAL CIRCUIT.

SOUTHERN DISTRICT OF NEW YORK.

Counties of New York, Westchester, Putnam, Dutchess, Columbia, Greene, Ulster, Sullivan, Orange and Rockland, with the waters thereof, and the District Court for the Southern District of New York has concurrent jurisdiction with the District Court for the Eastern District of New York over the waters within the counties of New York, Kings, Queens and Suffolk.

See Revised Statutes (Second Edition), §§ 541 and 542, p. 91.

EASTERN DISTRICT OF NEW YORK.

Counties of Kings, Queens, Richmond and Suffolk, with the waters thereof, and the District Court of the Eastern District of New York has concurrent jurisdiction with the District Court for the Southern District of New York over the waters within the counties of New York, Kings, Queens and Suffolk.

See Revised Statutes (Second Edition), §§ 541 and 542, p. 91.

NORTHERN DISTRICT OF NEW YORK.

Counties of Albany, Allegany, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Cortland, Delaware, Erie, Essex, Franklin, Fulton, Genesee, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Monroe, Montgomery, Niagara, Oneida, Onondaga, Ontario, Orleans, Oswego, Otsego, Rensselaer, St. Lawrence, Saratoga, Schenec-

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tady, Schoharie, Schuyler, Seneca, Steuben, Tioga, Tompkins, Warren, Washington, Wayne, Wyoming and Yates.

See Revised Statutes (Second Edition), § 541, p. 91.

DISTRICT OF CONNECTICUT.

The entire State of Connecticut.

See Revised Statutes (Second Edition), § 531, p. 89.

DISTRICT OF VERMONT.

The entire State of Vermont.

See Revised Statutes (Second Edition), § 531, p. 89.

FEDERAL STATUTES

RELATING GENERALLY TO THE

SESSIONS

OF THE

CIRCUIT AND DISTRICT COURTS OF THE UNITED STATES, AND APPLICABLE TO THE SECOND JUDICIAL CIRCUIT.

SOUTHERN DISTRICT OF NEW YORK.—CIRCUIT COURT.

Note.—The sections of Revised Statutes quoted hereunder are equally applicable to the Circuit Courts for the other Districts embraced within the Circuit, except where, on its face, the section shows that it applies to the Circuit Court for the Southern District of New York. Therefore the general sections are not repeated under the heading of the Circuit Courts for the other Districts in the Circuit, reference to them being made only by number, and the sections especially referring to the Circuit Courts for those Districts only being quoted in full.

SEC. 658. The regular terms of the circuit courts shall be held in each year, at the times and places following; but when any of said dates shall fall on Sunday, the term shall commence on the following day:

* * * * *

In the southern district of New York, at the City of New York, on the first Monday in April and the third Monday in October; and for the trial of criminal causes and suits in equity, on the last Monday in February; and exclusively for the trial and disposal of criminal cases, and matters arising and pending in said court, on the second Wednesday in January, March, and May, on the third Wednesday in June, and on the second Wednesday in October and December:

Provided, That the holding of any of the last mentioned terms for criminal business shall not dispense with nor affect

the holding of any other term of the court at the same time, and that the pending of any other term of the court shall not prevent the holding of any of the said terms for criminal business.

Revised Statutes (Second Edition), § 658, pp. 120, 122.

SEC. 661. Any circuit court may, at its own discretion, or at the discretion of the Supreme Court, hold special sessions for the trial of criminal causes.

Revised Statutes (Second Edition), § 661, p. 123.

SEC. 662. The Supreme Court, or, when that court is not sitting, any circuit justice or circuit judge, together with the judge of the proper district, may direct special sessions of a circuit court to be held, for the trial of criminal causes, at any convenient place within the district nearer to the place where the offenses are said to be committed than the place appointed by law for the stated sessions. The clerk of such court shall, at least thirty days before the commencement of such special session, cause the time and place for holding it to be notified, for at least three weeks, consecutively, in one or more of the newspapers published nearest to the place where it is to be held. All process, writs, and recognizances respecting juries, witnesses, bail, or otherwise, which relate to the cases to be tried at such special sessions, shall be considered as belonging to such sessions, in the same manner as if they had been issued or taken in reference thereto. Any such session may be adjourned from time to time to any time previous to the next stated term of the court; and all business depending for trial at any special session shall, at the close thereof, be considered as removed to the next stated term.

Revised Statutes (Second Edition), § 662, p. 123.

SEC. 669. In the district not mentioned in the five preceding sections, [these sections relate to California, Oregon, Nevada, Kentucky, Indiana, Tennessee, North Carolina, Virginia, and Wisconsin only] the presiding judge of any circuit court may appoint special sessions thereof, to be held at the places where the regular sessions are held.

Revised Statutes (Second Edition), § 669, p. 124.

SEC. 671. If neither of the judges of a circuit court is present to open any session, the marshal may adjourn the court from day to day until a judge is present: Provided, That if neither of them attends before the close of the fourth day after the time appointed for the commencement of the session, the marshal may adjourn the court to the next regular term.

Revised Statutes (Second Edition), § 671, p. 124.

SEC. 672. If neither of the judges of a circuit court be present to open and adjourn any regular or adjourned or special session, either of them may, by a written order, directed alternatively to the marshal, and, in his absence, to the clerk, adjourn the Court from time to time, as the case may require, to any time before the next regular term.

Revised Statutes (Second Edition), § 672, p. 124.

SEC. 613. The terms of the circuit court for the southern district of New York, appointed exclusively for the trial and disposal of criminal business, may be held by the circuit judge of the second judicial court and the district judges for the southern and eastern districts of New York, or any one of said three judges; and at every such term held by said judge of said eastern district he shall receive the sum of three hundred dollars, the same to be paid in the manner now prescribed by law for the payment of the expenses of another district judge while holding court in said district.

Revised Statutes (Second Edition), § 613, p. 107.

SOUTHERN DISTRICT OF NEW YORK.—DISTRICT COURT.

Note.—The sections of the Revised Statutes quoted hereunder are equally applicable to the District Courts of the other Districts embraced within the Circuit, except where, on its face, the section shows that it applies to the District Court for Southern District of New York. Therefore, the general sections are not repeated under the heading of the District Courts for the other Districts in the Circuit, reference to them being made only by number, and the sections especially referring to the District Courts for those Districts only being quoted in full.

SEC. 572. The regular terms of the district courts shall be held at the times and places following, but when any of said dates shall fall on Sunday, the term shall commence on the following day :

* * * * *

In the southern district of New York, in the city of New York, on the first Tuesday in every month.

Revised Statutes (Second Edition), § 572, pp. 98, 100.

SEC. 573. No action, suit, proceeding, or process in any district court shall abate or be rendered invalid by reason of any act changing the time of holding such court; but the same shall be deemed to be returnable to, pending, and triable in the terms established next after the return-day thereof.

Revised Statutes (Second Edition), § 573, p. 101.

SEC. 574. The district courts, as courts of admiralty, and as courts of equity, so far as equity jurisdiction has been conferred upon them, shall be deemed always open, for the purpose of filing any pleading, of issuing and returning mesne and final process, and of making and directing all interlocutory motions, orders, rules, and other proceedings, preparatory to the hearing, upon their merits, of all causes pending therein. And any district judge may, upon reasonable notice to the parties, make, and direct and award, at chambers, or in the clerk's office, and in vacation as well as in term, all such process, commissions, orders, rules, and other proceedings, whenever the same are not grantable of course, according to the rules and practice of the court.

Revised Statutes (Second Edition), § 574, p. 101.

SEC. 578. District courts shall hold monthly adjournments of their regular terms, for the trial of criminal causes, when their business requires it to be done, in order to prevent undue expenses and delays in such cases.

Revised Statutes (Second Edition), § 578, p. 102.

SEC. 581. A special term of any district court may be held at the same place where any regular term is held, or at such other place in the district as the nature of the business may require, and at such time and upon such notice as may be ordered by the district judge, and any business may be transacted at such special term which might be transacted at a regular term.

Revised Statutes (Second Edition), § 581, p. 102.

SEC. 583. If the judge of any district court is unable to attend at the commencement of any regular, adjourned, or special term, the court may be adjourned by the marshal, by virtue of a written order directed to him by the judge, to the next regular term, or to any earlier day, as the order may direct.

Revised Statutes (Second Edition), § 583, p. 102.

SEC. 587. When satisfactory evidence is shown to the circuit judge of any circuit, or, in his absence, to the circuit justice allotted to the circuit, that the judge of any district therein is disabled to hold a district court, and to perform the duties of his office, and an application accordingly is made in writing to such circuit judge or justice, by the district attorney or marshal of the district, the said judge or justice, as the case may be, may issue his order in the nature of a certiorari, directed to the clerk of such district court, requiring him forthwith to certify into the next circuit court to be held in said district all suits and processes, civil and criminal, depending in said district court, and undetermined, with all the proceedings thereon, and all the files and papers relating thereto. Said order shall be immediately published in one or more newspapers printed in said district, at least thirty days before the session of such circuit court, and shall be sufficient notification to all concerned; and thereupon the circuit court shall proceed to hear and determine the suits and processes so certified. And all bonds and recognizances taken for, or returnable to, such district court, shall be held to be taken for, and returnable to, said circuit court, and shall have the same effect therein as they could have had in the district court to which they were taken.

Revised Statutes (Second Edition), § 587, p. 103.

SEC. 588. When an order has been made as provided in the preceding section, the clerk of the district court shall continue, during the disability of the district judge, to certify, as aforesaid, all suits, pleas, and processes, civil and criminal, thereafter begun in said court, and to transmit them to the circuit court next to be held in that district; and the said court shall proceed to hear and determine them as provided in said section:

Provided, That when the disability of the district judge ceases or is removed, the circuit court shall order all such suits and proceedings then pending and undetermined therein, in which the district courts have an exclusive original cognizance, to be remanded, and the clerk of such court shall transmit the same, with all matters relating thereto, to the district court next to be held in that district; and the same proceedings shall then be had in the district court as would have been had if such suits had originated or continued therein.

Revised Statutes (Second Edition), § 588, p. 103.

SEC. 589. In the case provided in the two preceding sections the circuit judge, and in his absence the circuit justice, shall have and exercise, during such disability, all the powers of every kind vested by law in such district judge. But this provision does not require them to hold any special court, or court of admiralty, at any other time than that fixed by law for holding the circuit court in said district.

Revised Statutes (Second Edition), § 589, p. 104.

SEC. 590. When the business of a district court is certified into the circuit court on account of the disability of the district judge, the district clerk shall be authorized, by order of the circuit judge, or, in his absence, of the circuit justice within whose circuit such district is included, to take, during such disability, all examinations and depositions of witnesses, and make all necessary rules and orders, preparatory to the final hearing of all causes of admiralty and maritime jurisdiction.

Revised Statutes (Second Edition), § 590, p. 104.

SEC. 591. When any district judge is prevented, by any disability, from holding any stated or appointed term of his district court, or of the circuit court in his district in the absence of the other judges, and that fact is made to appear by the certificate of the clerk, under the seal of the court, to the circuit judge, or, in his absence, to the circuit justice of the circuit in which the district lies, such circuit judge or justice may, if in his judgment the public interests so require, designate and appoint the judge of any other district in the same circuit to hold said courts, and to discharge all the judicial duties of the

judge so disabled, during such disability. Such appointment shall be filed in the clerk's office, and entered on the minutes of the said district court, and a certified copy thereof, under the seal of the court, shall be transmitted by the district clerk to the judge so designated and appointed.

Revised Statutes (Second Edition), § 591, p. 104.

SEC. 592. When, from the accumulation or urgency of business in any district court, the public interests require the designation and appointment hereinafter provided, and the fact is made to appear, by the certificate of the clerk, under the seal of the court, to the circuit judge, or, in his absence, to the circuit justice of the circuit in which the district lies, such circuit judge or justice may designate and appoint the judge of any other district in the same circuit to have and exercise within the district first named the same powers that are vested in the judge thereof; and each of the said district judges may, in case of such appointment, hold separately at the same time a district or circuit court in such district, and discharge all the judicial duties of a district judge therein; but no such judge shall hear appeals from the district court.

Revised Statutes (Second Edition), § 592, p. 104.

SEC. 593. If the circuit judge and circuit justice are absent from the circuit, or are unable to execute the provisions of either of the two preceding sections, or if the district judge so designated is disabled or neglects to hold the courts and transact the business for which he is designated, the district clerk shall certify the fact to the Chief Justice of the United States, who may thereupon designate and appoint, in the manner aforesaid, the judge of any district within such circuit or within any circuit next contiguous; and said appointment shall be transmitted to the district clerk, and be acted upon by him as directed in the preceding section.

Revised Statutes (Second Edition), § 593, p. 104.

SEC. 594. The circuit judge, or circuit justice, or the Chief Justice, as the case may be, may, from time to time, if in his judgment the public interests so require, make a new designation and appointment of any other district judge within the

said circuits, for the duties, and with the powers mentioned in the three preceding sections, and to revoke any previous designation and appointment.

Revised Statutes (Second Edition), § 594, p. 104.

SEC. 595. It shall be the duty of the district judge who is designated and appointed under either of the four preceding sections, to discharge all the judicial duties for which he is so appointed, during the continuance of such disability, or, in the case of an accumulation of business, during the time for which he is so appointed; and all the acts and proceedings in the courts held by him, or by or before him, in pursuance of said provisions, shall have the same effect and validity as if done by or before the district judge of the said district.

Revised Statutes (Second Edition), § 595, p. 104.

SEC. 596. It shall be the duty of every circuit judge, whenever in his judgment the public interest so requires, to designate and appoint, in the manner and with the powers provided in section five hundred and ninety-one, the district judge of any judicial district within his circuit to hold a district or circuit court in the place or in aid of any other district judge within the same circuit; and it shall be the duty of the district judge, so designated and appointed, to hold the district or circuit [court] as aforesaid, without any other compensation than his regular salary as established by law, except in the case provided in the next section.

Revised Statutes (Second Edition), § 596, p. 105. By Act of Congress of 3d March, 1881, ch. 133, sec. 1, par. 2, 21 Stat. at Large, 435, so much of § 596 of the Revised Statutes as forbids the payment of the expenses of district judges while holding Court outside of their districts was repealed.

SEC. 597. Whenever a district judge, from another district, holds a district or circuit court in the southern district of New York, in pursuance of the preceding section, his expenses, not exceeding ten dollars a day, certified by him, shall be paid by the marshal of said district, as a part of the expenses of the court, and shall be allowed in the marshal's accounts.

Revised Statutes (Second Edition), § 597, p. 105.

SEC. 599. Whenever the judge of the northern district of New York is disabled to perform the duties of his office, it shall be the duty of the judge of the southern district, upon receiving from him notice thereof, to hold the district court, and to perform all the duties of district judge for such district. And whenever the judge of the southern district is so disabled, it shall be the duty of the judge of the eastern district, upon a like notice, to hold the district court, and to perform all the duties of district judge for the southern district. In such cases the said judges, respectively, shall have the same powers as are vested in the judge so disabled.

Revised Statutes (Second Edition), § 599, p. 105.

SEC. 600. Whenever the judge of the southern district of New York deems it desirable, on account of the pressure of public business or other cause, that the judge of the eastern district shall perform the duties of a district judge in the southern district, an order to that effect may be entered upon the records of the district court thereof; and thereupon the judge of the eastern district shall have power to hold the district court, and to perform all the duties of district judge for the southern district.

Revised Statutes (Second Edition), § 600, p. 105.

SEC. 601. Whenever it appears that the judge of any district court is in any way concerned in interest in any suit pending therein, or has been of counsel for either party, or is so related to or connected with either party as to render it improper, in his opinion, for him to sit on the trial, it shall be his duty, on application by either party, to cause the fact to be entered on the records of the court; and, also, an order that an authenticated copy thereof, with all the proceedings in the suit, shall be forthwith certified to the next circuit court for the district; and if there be no circuit court therein, to the next circuit court in the State; and if there be no circuit court in the State, to the next convenient circuit court in an adjoining State; and the circuit court shall, upon the filing of such record with its clerk, take cognizance of and proceed to hear the case, in like manner as if it had originally and rightfully been commenced therein.

Revised Statutes (Second Edition), § 601, p. 105.

SEC. 602. When the office of judge of any district court is vacant, all process, pleadings, and proceedings pending before such court shall be continued of course until the next stated term after the appointment and qualification of his successor; except when such first mentioned term is held as provided in the next section.

Revised Statutes (Second Edition), § 602, p. 105.

SEC. 603. When the office of district judge is vacant in any district in a State containing two or more districts, the judge of the other or of either of the other districts may hold the district court, or the circuit court in case of the sickness or absence of the other judges thereof, in the district where the vacancy occurs, and discharge all the judicial duties of judge of such district, during such vacancy; and all the acts and proceedings in said courts, by or before such judge of an adjoining district, shall have the same effect and validity as if done by or before a judge appointed for such district.

Revised Statutes (Second Edition), § 603, p. 106.

EASTERN DISTRICT OF NEW YORK.—CIRCUIT COURT.

SEC. 658. The regular terms of the circuit courts shall be held in each year, at the times and places following; but when any of said dates shall fall on Sunday, the term shall commence on the following day:

* * * * * * *

In the eastern district of New York, at Brooklyn, on the first Wednesday in every month.

Revised Statutes (Second Edition), § 658, pp. 120, 122.

For other Sections of the Revised Statutes (Second Edition) applicable to the Sessions of the Circuit Courts held in this District, see §§ 661, 662, 669, 671 and 672, on pp. 123 and 124 of the Revised Statutes (Second Edition), and printed *ante* at pp. 378 and 379.

EASTERN DISTRICT OF NEW YORK.—DISTRICT COURT.

SEC. 572. The regular terms of the district courts shall be held at the times and places following, but when any of said dates shall fall on Sunday, the term shall commence on the following day.

* * * * * * *

In the eastern district of New York, in Brooklyn, on the first Wednesday in every month.

Revised Statutes (Second Edition), § 572, pp. 98, 100.

For other Sections of the Revised Statutes (Second Edition) applicable to the Sessions of the District Courts held in this District, see

§§ 573, 574, 578, 581, 583, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 601, 602 and 603, on pp. 101–106 of the Revised Statutes (Second Edition), and printed *ante* at pp. 380–386.

NORTHERN DISTRICT OF NEW YORK.—CIRCUIT COURT.

SEC. 658. The regular terms of the circuit courts shall be held in each year, at the times and places following; but when any of said dates shall fall on Sunday, the term shall commence on the following day :

* * ' * * * * *

In the northern district of New York, at Canandaigua, on the third Tuesday in June; at Syracuse, on the third Tuesday in November; at Albany, on the third Tuesday in January. And when the said term appointed to be held at Albany be adjourned, it shall be adjourned to meet in Utica on the third Tuesday in March: but said adjourned term shall be for the transaction of civil business only.

Revised Statutes (Second Edition), § 658, pp. 120, 121, as amended by Act of Congress of March 23d, 1882, ch. 48, sec. 2, 22 Stat. at Large, 33.

For other Sections of the Revised Statutes (Second Edition) applicable to the Sessions of the Circuit Courts held in this District, see

§§ 661, 662, 669, 671 and 672, on pp. 123 and 124, and printed *ante* at pp. 378 and 379.

NORTHERN DISTRICT OF NEW YORK.—DISTRICT COURT.

SEC. 572. The regular terms of the district courts shall be held at the times and places following, but when any of said dates shall fall on Sunday, the term shall commence on the following day :

* * * * * * *

In the northern district of New York, at Albany, on the third Tuesday in January; at Utica, on the third Tuesday in March; at Rochester, on the second Tuesday in May; at Buffalo, on the third Tuesday in September; at Auburn, on the third Tuesday in November; and in the discretion of the judge of the court, one term annually at such time and place

within the counties of Onondaga, Saint Lawrence, Clinton, Jefferson, Oswego, and Franklin as he may from time to time appoint. Such appointment shall be made by notice of at least twenty days published in the State paper of New York and one newspaper published at the place where said court is to be held.

Revised Statutes (Second Edition), § 572, pp. 98, 100, as amended by Act of Congress of 23d March, 1882, ch. 48, sec. 1, 22 Stat. at Large, 32.

For other Sections of the Revised Statutes (Second Edition) applicable to the sessions of the District Courts held in this District, see

§§ 573, 574, 578, 581, 583, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 599, 601, 602 and 603 on pp. 101-106, and printed *ante* at pp. 380-386.

DISTRICT OF CONNECTICUT.—CIRCUIT COURT.

SEC. 658. The regular terms of the circuit courts shall be held in each year, at the times and places following; but when any of said dates shall fall on Sunday, the term shall commence on the following day:

* * * * * * *

In the district of Connecticut, at New Haven, on the fourth Tuesday in April; and at Hartford, on the third Tuesday in September.

Revised Statutes (Second Edition), § 658, p. 120.

For other Sections of the Revised Statutes (Second Edition) applicable to the sessions of the Circuit Courts held in this District, see

§§ 661, 662, 669, 671 and 672 on pp. 123 and 124 of the Revised Statutes (Second Edition), and printed *ante* at pp. 378 and 379.

DISTRICT OF CONNECTICUT.—DISTRICT COURT.

SEC. 572. The regular terms of the district courts shall be held at the times and places following, but when any of said dates shall fall on Sunday, the term shall commence on the following day:

* * * * * * *

In the district of Connecticut, at New Haven, on the fourth Tuesday in February; at Hartford, on the fourth Tuesday in May; at New Haven, on the fourth Tuesday in August, and at Hartford on the first Tuesday in December.

Revised Statutes (Second Edition), § 572, p. 98, as amended by Act of Congress of 30th June, 1879, ch. 49, 21 Stat. at Large, 41.

For other Sections of the Revised Statutes (Second Edition) applicable to the sessions of the District Courts held in this District, see

§§ 573, 574, 578, 581, 583, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 601, 602 and 603 on pp. 101-106 of the Revised Statutes (Second Edition), and printed *ante* at pp. 380-386.

DISTRICT OF VERMONT.—CIRCUIT COURT.

SEC. 658. The regular terms of the circuit courts shall be held in each year, at the times and places following; but where any of said dates shall fall on Sunday, the term shall commence on the following day :

* * * * * *

In the district of Vermont, at Burlington, on the fourth Tuesday in February; at Windsor, on the third Tuesday in May; and at Rutland, on the first Tuesday in October.

Revised Statutes (Second Edition), § 658, pp. 120, 122, as amended by Act of Congress of 5th June, 1874, ch. 214, 18 Stat. at Large, 53.

For other sections of the Revised Statutes (Second Edition), applicable to the sessions of the Circuit Courts held in this District, see

§§ 661, 662, 669, 671 and 672 on pp. 123 and 124 of the Revised Statutes (Second Edition), and printed *ante* pp. 378 and 379.

DISTRICT OF VERMONT.—DISTRICT COURT.

SEC. 572. The regular terms of the district courts shall be held at the times and places following, but when any of said dates shall fall on Sunday, the term shall commence on the following day :

* * * * * *

In the district of Vermont, at Burlington, on the fourth Tuesday in February; at Windsor, on the third Tuesday in May; at Rutland, on the first Tuesday of October.

Revised Statutes (Second Edition), § 572, pp. 98, 101, as amended by Act of Congress of 5th June, 1874, ch. 214, 18 Stat. at Large, 53.

For other Sections of the Revised Statutes (Second Edition), applicable to the Sessions of the District Courts held in this District, see

§§ 573, 574, 578, 581, 583, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 601, 602 and 603 on pp. 101-106 of the Revised Statutes (Second Edition), and printed *ante* at pp. 380-386.

VI.

R U L E S.

SOUTHERN DISTRICT OF NEW YORK.

CIRCUIT COURT.

JUDGES AND OFFICERS
OF THE
CIRCUIT COURT OF THE UNITED STATES
FOR THE
SOUTHERN DISTRICT OF NEW YORK.

SAMUEL BLATCHFORD—Associate Justice of the Supreme Court of the United States assigned to the Second Judicial Circuit—Circuit Justice.

No. 1432 K Street, N. W., Washington, D. C.

WILLIAM J. WALLACE—Circuit Judge.
Syracuse, N. Y.

ELIHU ROOT—United States Attorney.
No. 52 East Fifty-fifth Street, New York City.

United States Attorney's Office, Room No. 50 Post-Office Building, New York City.

TIMOTHY GRIFFITH—Clerk Circuit Court.
New York City.

JOHN A. SHIELDS—Deputy Clerk.
No. 300 Schermerhorn Street, Brooklyn, Kings Co., N. Y.

Clerk's Office—Room No. 82 Post-Office Building, New York City.
Clerk's Private Office, Room No. 77 Post-Office Building, New York City.

Clerk's Office—Record Room, Room No. 132 Post-Office Building, New York City.

JOEL B. ERHARDT—United States Marshal.
New York City.

JUDGES AND OFFICERS OF THE CIRCUIT COURT. 393

HENRY R. CURTIS—Chief Deputy Marshal.

No. 138 East Fortieth Street, New York City.

Marshal's Office, Room No. 56 Post-Office Building, New York City.

Court Rooms in the Post-Office Building, New York City, as follows,
viz. :

Court Room for Jury Trials—Room No. 43.

Court Room for Equity Trials—Room No. 47.

Court Room for Criminal Trials—Room No. 73.

Circuit Courts are held in the appropriate Court Rooms in the City of New York as follows, viz. :

First Monday in April and third Monday in October, for all cases.

Last Monday in February for Criminal and Equity cases only.

Second Wednesday in January, March and May, the third Wednesday in June, and the second Wednesday in October and December exclusively for Criminal cases.

For FEDERAL STATUTES especially relating to this Court, See

Respecting the PRACTICE in the CIRCUIT COURTS generally, their power to make RULES, etc., pp. 353 to 355.

Respecting FEES, etc., pp. 357 to 372.

Respecting the JURISDICTION of the Court, p. 375.

Respecting SESSIONS, etc., pp. 377 to 379.

RULES
OF THE
CIRCUIT COURT OF THE UNITED STATES
FOR THE
SOUTHERN DISTRICT OF NEW YORK.

I.
COMMON LAW RULES.

[Adopted April 28th, 1838, and took effect the 1st Monday of August, 1838.]

Rule 1.

Suits relating to the title or possession of land (including all *real actions*), are to be the same in form, in this Court, and to be conducted by like processes, as are now used in the Supreme Court of the State of New York.

Rule 2.

Other actions at law shall be commenced by *capias ad respondendum*, or summons, in which shall be expressed the true cause of action; except that bills of privilege may be filed, according to the usual course of the Court, at the election of the plaintiff.

Rule 3.

Writs and process must be signed and sealed by the Clerk, and have the name of the attorney at whose instance they issue, endorsed upon them.

Usually, they are to bear test the day they are issued, and

may be returnable the same day, or any day thereafter (Sundays excepted), in term, or vacation; but *alias* and *pluries* writs may be tested on the return day of the next preceding process; and writs of execution, attachments for contempt of Court, or non-payment of costs, writs of error, mandamus, or inhibition, and writs of recognizance of bail in civil causes, must be returnable in term.

When bail is to be charged, the *capias ad satisfaciendum* shall be placed in the marshal's office at least six days before the return day thereof.

Rule 4.

The defendant may be held to bail, of course in actions of debt, covenant and assumpsit, where the suit is on an obligation or agreement to pay money, and the writ expresses the cause of action and the true amount due; bail may be taken to double the amount stated in the writ, provided, however, that the addition to such amount shall not, in any case, exceed one thousand dollars.

In all other cases (except when regulated by statute), bail shall not be exacted without an order of a judge endorsed upon the writ.

Rule 5.

If the writ is issued for a sum greater than is justly due, the plaintiff shall pay all costs incurred in proceedings to obtain a mitigation of bail.

Rule 6.

Rules that the marshal return process, or bring in the body, shall be rules of ten days, "or that he show cause, at the expiration of that time, before one of the judges at Chambers, why an attachment should not issue against him;" and, in default of sufficient cause shown, an attachment may be ordered, and such attachment may be proceeded upon, before either of the judges, and the marshal be committed or discharged upon his order; all the proceedings shall be filed, and a rule of Court be entered upon the final order of the judge, in conformity thereto.

Rule 7.

In bailable suits, the defendant shall appear, and put in bail

to the action, and give due notice thereof, within ten days after the return day of the process served upon him ; or, if the suit was removed to this Court from a State Court, within ten days after filing a copy of the process in this Court.

Rule 8.

The plaintiff shall except to bail and give notice thereof, within four days after notice that the same has been put in, and, in default thereof, such bail shall be deemed perfected.

Rule 9.

Within four days after notice of exception, the bail shall justify, or new bail be put in and perfected ; and, if bail justify at any time subsequently, such subsequent justification shall not affect any proceedings on the bail bond, or against the officer, which may have been instituted, unless upon the special order of a judge, and on such terms as he shall impose.

Rule 10.

Bail may justify before the clerk, or one of the commissioners to take affidavits, &c., appointed by this Court, with a right of appeal to one of the judges at Chambers, and thence to the Court.

Rule 11.

The service of a declaration before bail shall be put in, or the acceptance of a plea before the time of exception to bail shall have expired, shall not be construed to be a waiver of bail, or of justification.

Rule 12.

If bail to the officer becomes special bail, and the plaintiff except thereto, he may nevertheless take an assignment of the bail bond, if bail to the action is not duly perfected.

Rule 13.

The following shall be terms on which proceedings in the suit on the bail bond shall be stayed, or the attachment against the officer set aside :

1st. Putting in and perfecting bail above, and paying the

costs of the suit on the bail bond, or of the attachment and proceedings thereon and of the motion, unless a full compliance with these terms shall have been previously offered ;

2d. Consenting to place the cause in the same condition of progress as if bail had been duly put in and perfected. And if, by the default of putting in bail, a trial shall have been lost, then the suit on the bail bond, or proceedings on attachment, shall stand as security, with such leave to proceed thereon, as the judge may allow.

Rule 14.

The appearance of the defendant endorsed on the *capias* shall be a sufficient appearance, where special bail is not required.

Rule 15.

All rules, which, by the practice of this Court, either party is entitled to enter without special application to the Court, may be entered as well in vacation as in term, and shall have the like effect as if entered in term.

Rule 16.

The defendant having perfected his appearance, may, at any time thereafter, take a rule against the plaintiff, "to declare within twenty days after service of notice of the rule, or be non-pressed."

Rule 17.

The rule to plead, answer, or join in demurrer, shall be a rule of twenty days after service of a notice of the rule, and of a copy of the pleading to be answered ; except the rule to join in demurrer to a plea in abatement, which shall be a rule of four days only.

Rule 18.

In suits commenced by *scire facias*, the service of the writ shall be personal on the party to be summoned, except in proceedings for the revival of a judgment, or continuance of other liens.

Rule 19.

A *scire facias* upon recognizance, or to revive a judgment, or

continue any other lien, shall be served by personal summons of the defendant, or, if he cannot be found, by leaving a copy at his residence or usual place of business; and the marshal shall return the manner of service. If the defendant has no known residence or place of business within the district, the plaintiff may proceed as heretofore, by two writs of *scire facias*. But the return of "*nihil*" by the marshal shall also state the reason for not making the service as above directed.

Rule 20.

Upon the return of "*scire feci*" to a *scire facias*, or "*nihil*" to an *alias scire facias*, the rule shall be that the defendant appear and plead in twenty days, or judgment; but notice of the rule to appear need not be served; nor notice of the rule to plead, unless the defendant appear.

Rule 21.

When there shall have been a judgment of *respondeas ouster*, on demurrer to a plea in abatement, the plaintiff having served the defendant with a notice of the judgment, may, after four days from the day of service of such notice, cause the default of the defendant in not pleading to be entered.

Rule 22.

After default entered, the party shall not be bound to accept a declaration, pleading, or answer of course, unless the opposite party shall file an affidavit of merits, and serve a copy, pay or offer to pay the costs of the default, and consent to place the cause in the same condition as if the pleading had been duly filed and served.

Rule 23.

The party in whose favor a default has been entered, may, at any day after, enter a rule for such judgment as is to be rendered by law by reason of the default; and, in all actions sounding in damages, after judgment for the plaintiff by default, or on demurrer, the damages shall be assessed on writ of inquiry; the damages on notes, bills, or specialties for the payment of money, shall be assessed by the clerk.

Rule 24.

The caption of declarations and all subsequent pleadings may be of the return day of the writ, and need not be stated as of any term of the Court. All pleadings must be signed by an attorney of the Court.

Rule 25.

No order to show cause of action, mitigate bail, or for a bill of particulars, will be allowed, except upon affidavit showing probable cause therefor; nor unless the order to show cause is applied for within four days after the arrest; and for particulars, within four days after the pleading under which it is demanded is filed and served.

Rule 26.

In actions founded upon contract, the defendant, if he shall appear and plead the general issue, shall annex to his plea, and file therewith, an affidavit that he has a good and substantial defence upon the merits, as he is advised by his counsel and verily believes, together with a certificate of counsel that he so advised the party; otherwise, such plea may be treated as a nullity.

Rule 27.

Special pleas or demurrers to pleadings shall be accompanied by a certificate of a counsellor of this court, that, in his opinion, the special plea or demurrer is well founded; otherwise, the plea or demurrer may be treated as a nullity.

Rule 28.

If a plea in abatement is not served within ten days from the day of service of a notice of the rule to plead and copy of the declaration, the plaintiff shall not be held to receive the same without a special order of the Court or a judge.

Rule 29.

The plaintiff may, at any time before default for not replying shall be entered, if the plea shall be a special plea in abatement, or within twenty days after service of a copy of the plea, if it shall be the general issue, amend the declaration; and the

rule to plead, which may have been taken against the defendant, shall then be deemed to be from the day of the service of a copy of the amended declaration; and, in like manner, where there shall be a demurrer to a declaration or other pleading, not being a plea in abatement, the party against whom the demurrer shall be taken, at any time before default for not joining in demurrer is entered, may amend the pleading demurred to; and, in these cases, the respective parties may amend of course, and without costs, but shall not be entitled so to amend more than once. Nor shall any amendment be made without first entering in the book of common rules, a rule for the amendment, and either amending the pleading on file in a distinct manner, showing the amendment, or filing a copy of the amended pleading.

Rule 30.

If the defendant shall plead the general issue, and if the plaintiff shall not, within twenty days after service of a copy of the plea, amend the declaration, or if either party shall, in pleading, in any degree after the plea, tender an issue to the country, and if the opposite party shall not demur to such pleading within twenty days after service with a copy thereof, the cause shall, in each of these cases, be deemed to be at issue at the end of such twenty days.

Rule 31.

All notices shall be in writing; and, unless the party to be served therewith be an attorney of this Court, residing in the city of New York, or shall have employed an attorney of this Court, it shall be sufficient service upon him to put up any notice, declaration, or other pleading or paper, in a conspicuous place in the clerk's office; or the same may be given to the party. But, if notice of a retainer shall be received after a copy of a declaration and notice of rule to plead shall have been put up in the clerk's office, and before the defendant's default has been entered, a copy of the declaration and a notice of the rule to plead, stating the time when the declaration and notice were put up in the clerk's office, shall be served on the defendant's attorney; and the time of pleading, in such case, shall be from the day of serving in the clerk's office, deducting

the time that may have elapsed between the receipt of the notice of retainer and such service on the defendant's attorney.

Rule 32.

After notice of retainer, all notices, pleadings and papers shall be served on the attorney ; provided, however, that where a defendant is returned in custody, and remains in jail, and has retained no attorney, a copy of the declaration and notice of rule to plead, shall be delivered to such prisoner, or to the officer or keeper of the jail in whose custody he is ; and, provided further, that where the object is to bring a party into contempt for disobeying any rule or order of Court, the service shall be on him personally, unless otherwise especially ordered by the court.

Rule 33.

When an attorney of this Court, who does not reside in the city of New York, has no agent in this Court, but has one in the Supreme Court of the State, residing in this city, he shall be considered the agent of such attorney in this Court ; and, if there is no such agent, service of all notices and papers directed to the attorney, by affixing the same in a conspicuous place in the clerk's office, shall be sufficient.

Rule 34.

Service on an attorney's agent shall be as valid, in all cases, as if made on the attorney himself. The appointment of agents in this Court shall be in writing, signed by the attorney and filed with the clerk, who shall keep a catalogue of the same, with the attorneys' names alphabetically arranged.

Rule 35.

Notices of trial, argument, hearing, or motion, are to be for the first day of term ; if, however, sufficient cause is shown therefor, an order may be obtained from the Court or a judge, permitting such notice to be given for any other day of term, including times to which the Court may stand adjourned.

Rule 36.

Notices of justification of bail, notices of motions, argument,

or hearing, shall be served at least four days before the time of such justification, hearing, &c., and eight days when the same shall be served pursuant to the 31st and 34th Rules of this Court. Notices of trial shall be at least eight days.

Rule 37.

The day on which any rule shall be entered, or order, notice, pleading, or paper served, shall be excluded, in the computation of the time for complying with the exigency of such rule, order, notice, pleading, or paper; and the day on which compliance therewith is required, shall be included; except where it shall fall on a Sunday, in which case the party shall have the next day to comply therewith.

Rule 38.

The attorney of either party may give notice of argument of issues in law, or on writs of error or cases made, and set them down for hearing, and either party shall be at liberty to bring them on when called upon his notice, and if the other party does not appear, he may take such judgment or order as he is entitled to thereupon, by default.

Rule 39.

Motions in arrest of judgment; to set aside nonsuit, verdict, or inquisition, otherwise than for irregularity only; to withdraw pleadings from the files or alter the minutes of Court; to quash indictments; for a new trial; in relation to writs of error, mandamus or certiorari; to stay proceedings beyond a stated term; or for the judgment of the Court on issues of law or case made; or for the relief of special bail after they are fixed at law, must be made before the Court in term.

Rule 40.

All other motions may be made before either of the judges out of Court.

Rule 41.

Commissions to take testimony may be taken out by either party after suit brought.

Rule 42.

Four days' notice shall be given in writing to the opposite

party, or his attorney, of the intention to sue out a commission, together with the names of the commissioner or commissioners, witness or witnesses, when known, and residence and occupation of commissioners and witnesses, when known, and of the facts expected to be proved.

Rule 43.

At the expiration of the four days, a rule may be entered of course in the common rules, ordering such commission, unless proceedings are previously stayed by a judge, or unless the attorney of the opposite party file a written consent to admit, on the trial, that the witness named will swear to the facts stated.

Rule 44.

All commissions must be issued under the seal of the Court and signed by the clerk, with the name of the attorney moving it subscribed thereto. They may be directed to one commissioner or three; but no costs shall be taxed for the services of more than one commissioner, unless both parties unite in requiring a greater number.

Rule 45.

After a commission is actually issued and in a train for execution, proceedings may be stayed in the cause by a judge, on proper cause shown, a reasonable time for the execution and return thereof.

Rule 46.

A commission may be moved for before the Court, or a judge out of Court, (under special circumstances to be allowed by the Court or judge,) and the proceedings in such case are to be conformable to the rules of this Court and the District Court applicable thereto.

Rule 47.

A commission may be executed by a majority of the commissioners named therein, if more than one, and shall be accompanied by written or printed instructions directing the manner of its execution and return.

Rule 48.

The interrogatories for the direct and cross-examination shall be annexed to the commission, and, in case the parties disagree respecting them, be presented to a judge for his allowance at one time ; a copy of the direct interrogatories, with a notice of the time of presenting the same for allowance, shall be served eight days before such time, and copies of cross-interrogatories four days after such service.

Rule 49.

Witnesses not named in the commission may be examined by the commissioners, and, if the depositions are objected to on trial, the Court will decide upon the sufficiency of the excuse for not naming them ; all objections to the depositions for this cause shall, however, be deemed waived, unless notice in writing be given thereof to the opposite party within four days after the commission is opened.

Rule 50.

Commissions executed within the United States may be returned by mail, addressed to the clerk, and having the title of the cause marked upon the envelope ; those executed out of the United States, may be returned in like form, by the usual mode of transmitting letters between such place and the city of New York.

Rule 51.

Motion for judgment, that the suit be dismissed for not going to trial, may be made after the discharge of the jury, in the same term for which notice of trial was given, or at the next term ; and the plaintiff shall not be permitted to stipulate to try the cause at the next term, unless upon sufficient excuse, to be approved by the Court, for not having proceeded to trial ; and, if the costs ordered to be paid on permission to stipulate, be not paid within twenty days after such permission, the defendant may, after demand and service of a certified copy of the order to pay costs, and of the taxed bill, on filing an affidavit of such demand and service and of non-payment, enter judgment that the suit be dismissed, in the same manner as if no permission had been given.

Rule 52.

Each judge shall be furnished, at the argument, with a copy of the case, bill of exceptions, demurrer to evidence, demurrer book, or special verdict; or, on motion for a new trial upon newly-discovered evidence, with copies of the affidavits or papers whereon the motion is founded or opposed; or, if the motion be in arrest of judgment, with copies of the pleadings, or so much thereof as may be necessary, together with the points intended to be made by the respective parties. And copies of the affidavits and papers on which such motions are founded, shall be served on the opposite party, four days before the day for which the motion is noticed.

Rule 53.

If the plaintiff, at the commencement of the action, be, or, pending the same, become, a non-resident of this State, or if, on demand in writing by the defendant's attorney, notice of his residence shall not be given, the defendant may, upon proof of either such cause, enter a rule of course, that the plaintiff give security for costs, within ten days after service of notice thereof, or be non-prossed.

Rule 54.

The security shall be a bond to the opposite party, filed in the clerk's office, duly executed by some sufficient person residing within the district, in the penalty of one hundred dollars, (unless a larger penalty shall be directed by the Court or a judge,) with a condition, that, if the plaintiff shall discontinue his action, or it be dismissed or non-prossed, or if judgment shall pass against him therein, he shall pay all such costs as shall be adjudged or awarded against him in such action. The sufficiency of the security may be excepted to; and, thereupon, such security shall justify before the clerk, within the respective periods, and in like manner, as is the practice with respect to special bail. And, on failure of giving such security, or in default of such justification, and on due proof of the service of notice of such rules, and of any such default, a judgment of *non-pros* may be entered.

Rule 55.

When a cause is noticed for trial or argument for the first

day of the term, a notice thereof, with a note of the issue and of the pleadings, and of the attorneys' names, shall be delivered to the clerk at least eight days next preceding the term; and the clerk shall, as early as the following Thursday, have the calendar of causes to be tried made up, arranging them according to the dates of their issues. And no cause shall be put upon the calendar, without the special order of the Court, unless the note of issue shall be furnished as is hereby required.

Rule 56.

Where an action is pending in this Court, and either party dies before final judgment, and the cause of action survives, the legal representatives of the deceased party may, on presenting letters testamentary, or of administration, in open Court, be admitted voluntarily to come in and prosecute or defend such suit, as party thereto; the letters testamentary, or of administration, remaining deposited in Court during such term, to the end that any legal objection to the right of such representative to appear may be taken.

Rule 57.

The order admitting such party, unless assented to by the opposite party, shall be *nisi*, in the first instance, and become absolute if sufficient cause be not shown against it, within four days after notice thereof.

Rule 58.

If such representative be appointed more than ten days before a stated term, an order may be entered *nisi*, in the common rules, authorizing him to prosecute or defend, and shall become absolute, if not vacated or suspended by order of a judge or the Court, within ten days after service of a copy thereof on the attorney of the opposite party.

Rule 59.

When such rule is entered out of Court, the letters testamentary, or of administration, shall at the same time be deposited with the clerk, and so remain until the succeeding term, or until the rule becomes absolute, or is vacated, as before provided.

Rule 60.

The clerk shall, fifteen days before a stated term, (and as many days before a special sessions, or adjourned term, as circumstances will permit, where fifteen days do not intervene,) issue to the marshal a *venire*, requiring him to summon twenty-four grand jurors, and thirty-six petit jurors. If the state of public business requires a greater number of petit jurors, a mandate shall be obtained from one of the judges, and be endorsed on the *venire*, directing the additional number of jurors to be summoned, which shall then be regarded as part of such *venire*.

Rule 61.

All jurors residing out of the city of New York shall be summoned at least six days and petit jurors residing within the city, four days, before the return day of the *venire*.

Rule 62.

The *venire* shall specify the qualifications of jurors: "free
" and lawful men, resident within the Southern District of
" New York, above the age of twenty-one, and under the age
" of sixty years, each of whom shall have in his own name, or
" right, or in trust for him or his wife, a freehold in lands,
" messuages, and tenements, (or a personal estate, if resident
" within the city of New York,) of the value of one hundred
" and fifty dollars, free of all reprises, debts, demands, or encum-
" brances whatsoever."

Rule 63.

The marshal shall annex to the return of every *venire* a panel of jurors summoned, designating their names, residence, and occupation, and at the request of any party indicted, or having a civil cause on the calendar for trial, the clerk shall furnish him with a copy of the panel.

Rule 64.

Inquests in causes may be taken, out of their order on the calendar, at the opening of the Court, on any day after the first day in term, provided the intention is expressed in the notice of trial, and a sufficient affidavit of merits be not filed

and a copy thereof served ; and, when an inquest is regularly taken, the same shall not be set aside except on payment of the costs thereof, and of opposing the motion.

Rule 65.

Rules for final judgment shall be absolute from the time of entry, unless conditional in their terms ; and the party obtaining the same is entitled to proceed thereon *instantly*.

Rule 66.

Proceedings upon judgments may be stayed, by motion to the Court, or by order of a judge ; and a case agreed or settled, or a bill of exceptions signed, will, *per se*, stay proceedings thereon.

Rule 67.

Whenever it shall be intended to move to set aside a verdict, except for irregularity, a case may be prepared by the party intending the motion, and a copy thereof served on the opposite party, before judgment is rendered and entered upon such verdict, who may, within four days thereafter, propose amendments thereto, and serve a copy on the party who prepared the case, and, if the parties cannot agree together in regard to such amendments, then, within four days thereafter, either party may give the other notice to appear, within a convenient time, and not more than four days after service of such notice, before the judge who tried the cause, to have the case and amendments settled ; and the judge shall thereupon correct and settle the same as he shall deem to consist with the truth of the facts ; but, if the parties shall omit, within the several times above limited, unless the same shall be enlarged by a judge, the one to propose amendments, and the other to notify an appearance before the judge, they shall respectively be deemed, the former to have agreed to the case as prepared, and the latter to have agreed to the amendments as prepared ; and, if the party omit to make a case within the time above limited, unless the time shall be enlarged as aforesaid, he shall be deemed to have waived his right thereto.

Rule 68.

If judgment has been rendered upon a verdict, the party intending to move for a new trial shall give four days' notice in writing to the opposite party, of any motion to stay execution thereon, and also of the petition intended to be filed pursuant to 18th section of the Act of Sept. 24th, 1789, unless a shorter time be allowed by the Court or a judge.

Rule 69.

Where exceptions to the opinion of the Court are taken by either party on the trial of a cause, or there is a demurrer to evidence interposed, or a special verdict found, the party shall not be required to prepare his bill of exceptions at the trial, or his demurrer or statement of the evidence, or to put in form the special verdict, but shall merely reduce such exceptions to writing, or make a minute of the demurrer to the evidence, and of the facts found specially by the jury, as the case may happen to be, and deliver it to the Court; or the Court will themselves, at the request of either party, note the point, and the bill of exceptions, demurrer to evidence, and special verdict, shall afterwards be drawn up, amended, and settled, within such times, and under the same rules and regulations as are observed with respect to cases.

Rule 70.

The same rules and regulations shall apply to cases made upon verdicts taken subject to the opinion of the Court, and it shall be the duty of the party in whose favor such verdict shall be taken, to make and prepare the case. Where a case shall be made, with leave to turn the same into a special verdict, or bill of exceptions, the party shall not be at liberty to do either at his election, but the Court may, if they think proper, prescribe the one which he shall adopt.

Rule 71.

When a bill of exceptions shall be taken on the trial, the same may before judgment, be used instead of a case, on motion for a new trial, and notice of such motion, together with service of a copy of such bill of exceptions, shall operate

to stay all further proceedings, until the decision of the Court, provided, that proceedings shall not be longer stayed than if a case had been regularly made.

Rule 72.

In cases of division of opinion between the judges on points of law, the Court, at the instance of either party, will forthwith note such points in writing.

Rule 73.

..... Either party may, within four days thereafter, serve on the other a statement, or certificate in writing, of such points, and also of facts in the case upon which the points arose, and, if no amendments are proposed thereto within two days, such statement shall be filed and shall be engrossed by the clerk, and be certified to the Supreme Court, under the seal of this Court.

Rule 74.

In case of disagreement between the parties, the statement or certificate shall be submitted to the Court, and be settled by the judges, as in the matter of a case or bill of exceptions.

Rule 75.

The like practice shall be pursued, in certifying a division of opinion in proceedings on indictments.

Rule 76.

The *placita* of judgment records shall be of the day when issue was joined, or the default was entered, and need not be stated as of any term of the Court.

Rule 77.

Continuance by *vice comes non misit breve* or *curia advisari vult*, are abolished in this Court, and, instead thereof, an entry shall be made that the cause was duly continued until the time when the trial, judgment, or other act of the Court therein requiring an entry on the record, was had.

Rule 78.

In the sale of real estate under execution issuing from this

Court, the marshal shall conform his proceedings to the directions of the law of this State, now in force, in relation to the sale of real estate on execution, and, in addition to the certificate filed with the clerk of the county where the lands sold are situated, shall file a copy thereof with the clerk of this Court.

Rule 79.

Redemption of lands sold under execution out of this Court, may be made in the same manner, and with like effect, and by the same persons, as prescribed by the laws of this State now in force. And the sales by the marshal shall be made subject to such redemption.

Rule 80.

On suing out a writ of error to the District Court, and before the clerk seals the same, the plaintiff in error, (other than the United States,) shall file security, with two or more sureties, to be approved by one of the judges of the Court, (in the sum of five hundred dollars when the writ of error does not operate as a *supersedeas*,) conditioned to prosecute his writ of error to effect, and answer all damages and costs awarded against him.

Rule 81.

The clerk shall forthwith make return to a writ of error, by transmitting a certified copy of the record and all proceedings in the cause, (including the bill of exceptions, when one has been signed by the judge and filed by the party,) under the seal of the Court.

Rule 82.

The plaintiff in error shall assign error within two days of the term, in which the writ is returned, first following the return thereof, and the defendant shall join issue, within two days after the assignment, unless, in either case, the Court, by special order, shall enlarge the time.

Rule 83.

No further order on the defendant in error to appear and join in error, need be given, than the citation required by statute, provided that the same is served twenty days previous to the return of the writ of error.

Rule 84.

If the plaintiff in error fails to appear and file his assignment of errors, within two days after the return of the writ of error, the defendant may have a rule of course, for judgment of *non pros*. But if there are not two days remaining in term after the return of the writ of error, the plaintiff will be entitled to the two first days of the succeeding term.

Rule 85.

The plaintiff in error may, by affidavit, show and prove the value of the matter in dispute, in order to sustain the *jurisdiction* of the Court, and a suggestion shall thereupon be entered on the record.

Rule 86.

No *certiorari* for diminution shall issue, without the affidavit of the party, showing reasonable cause for alleging diminution, and in what such diminution consists; nor shall it be allowed after issue in error joined, without special order.

Rule 87.

In every cause in which the defendant in error fails to appear, the plaintiff in error may proceed *ex parte*.

Rule 88.

When a bond with sureties is approved by the judge and filed, the clerk may seal a writ of error, without mandate or allowance by the judge.

Rule 89.

A judge's order, staying proceedings, accompanied with service of notice of motion, and copies of proofs to be used thereon, shall stand in force until revoked or modified by one of the judges, or until the order of the Court thereon. But, if the party obtaining such order shall not proceed thereon at the next term, the opposite party may enter an order of course, vacating such stay of proceedings, and for his costs in consequence thereof.

Rule 90.

No agreement, or consent, between the parties or their at-

torneys, in respect to the proceedings in court, shall be binding unless reduced to writing, and signed by the party against whom it shall be alleged or suggested.

Rule 91.

When a suit shall be commenced for a non-resident, and also when, at any time pending the action, the plaintiff shall remove out of the district, and the attorney shall thereafter proceed in such suit, without security for costs being given, he shall, in either case, be deemed to have become security for costs to an amount not exceeding one hundred dollars. Provided, that this rule shall not apply where one of several plaintiffs resides within the district.

Rule 92.

Upon payment of money into Court, except with a plea of tender, the plaintiff, if he accept thereof in full of the debt or damages claimed, shall serve the defendant with a bill of costs, and give two days' notice of taxation; and unless the defendant pays the costs within two days after the same shall be taxed, the plaintiff may take out the money and proceed in the cause, and shall be entitled to judgment for the amount so taken out of Court; but execution shall be endorsed "to levy the costs of suits." And, where money is paid into Court, the amount shall not be struck out of the declaration or verdict, but the plaintiff shall deduct the same from his execution.

Rule 93.

Attorneys and counsellors of the Supreme Court, and solicitors and counsellors of the Court of Chancery, of this State, may, on presentation of their licenses to the clerk and his report of their degree, have an order of course entered, in open Court, in term time, or in the common rules, in vacation, admitting them to the same standing in this Court; and attorneys and solicitors of the said Courts may also be admitted as proctors, and counsellors of the said Courts may be admitted as advocates, on the Admiralty side of this Court; all such officers first taking and subscribing the oaths of office prescribed by the Constitution and laws of the United States.

Rule 94.

The clerk may tax or certify bills of costs, and sign judgment records. In case of the absence of the clerk from the city, or his inability to transact business, his deputy or chief clerk is authorized to sign judgments, and tax or certify all bills of costs in this Court, other than those of the clerk.

Rule 95.

No costs shall hereafter be taxed by either party, as against the other, on motion made pursuant to the 40th rule of this Court, except for disbursements actually incurred, unless upon proceedings taken under the 5th rule of this Court.

Rule 96.

The costs of parties, except as otherwise regulated by law, shall be allowed according to the rates, for the time being, in the Supreme Court of this State; and for taking depositions, under the Act of Congress, or under commissions, the same charges, and no other, shall be taxed, as if the depositions had been drawn and engrossed by the attorneys; and no other charges, or expenses, incurred in taking such depositions, or executing, or returning, commissions, shall be taxed by one party against the other.

Rule 97.

Appeals from taxation of costs, may be made *instantly* to a judge out of Court, but no costs shall be allowed to either party, on such appeal.

Rule 98.

No notice, (except to settle a case, or bill of exceptions,) can be given for proceedings before a judge out of the city of New York, without an order first obtained for that purpose, or an affidavit showing both judges absent from the city.

Rule 99.

Causes will be called in their place on the calendar, and no motion will be entertained to set them down for a particular day, and if not moved for trial, when called, the party entitled to bring them on will be regarded in default, unless the entire calendar is called again.

Rule 100.

Where two counsel, on each side, either in civil or criminal causes, sum up to the jury, or argue to the Court, the arguments shall be heard alternately, and not from both counsel consecutively on the same side.

Rule 101.

The clerk of this Court, and, in case of his sickness, or inability to transact business, or absence from the city, his deputy, or chief clerk, being of the degree of attorney or counsellor of this Court, (and whose appointment shall have been duly filed in the clerk's office,) may take the acknowledgment of satisfaction of judgment entered in this Court.

Rule 102.

In cases not provided for by the rules of this Court, the Rules of the District Court of the Southern District of New York, for the time being, whether now in force, or subsequently adopted, so far as the same are applicable, are to be considered as rules for this Court.

Rule 103.

The sheriff, and under-sheriff, of the city and county of New York, are appointed to serve process, issued out of this Court, in all causes in which the marshal of the Southern District of New York, or his deputy, is a party.

Rule 104.

The clerk of this Court, and his chief clerk or deputy, the general deputy of the marshal of the Southern District of New York, (the said chief clerk or deputy of the clerk and general deputy of the marshal being designated by appointments duly filed in the clerk's office,) and the clerk of each of the counties within the Southern District of New York, (other than the city and county of New York,) for the time being, shall, *ex-officio*, be commissioners to take affidavits and acknowledgment of bail, in civil causes depending in the Courts of the United States, pursuant to the provisions of the Acts of Congress in that behalf; and all orders heretofore made for the appointment of such commissioners are hereby annulled.

II.

EQUITY RULES.

[Adopted April 28th, 1838, and took effect the 1st Monday of August, 1838.]

Rule 105.

No motion for an injunction, (except to stay waste,) shall be heard, unless a copy of the bill, and of the depositions to be offered in its support, shall be served on the adverse party, or his attorney, at least four days before motion made.

Rule 106.

The defendant may show cause against the allowance of an injunction, either by plea, answer, or demurrer to the bill, or by parol exception to its legal sufficiency, or by deposition, disproving the equity on which the motion is founded.

Rule 107.

Suppletory, or supporting, proofs may, at the discretion of the Court, or judge, be offered by the complainant, to rebut the cause shown by the defendant; but the reception of such additional proofs is not to permit the introduction of further proofs in opposition thereto, by the defendant, previous to the final hearing upon the merits.

Rule 108.

If a general commission is not issued, pursuant to the 25th Rule of the Supreme Court, within ten days after replication filed, either party may give notice of the examination of witnesses before the standing examiner of this Court; and three months from the time of the replication shall be allowed the parties for taking their depositions before the examiner.

Rule 109.

When no proceedings are taken by either party within thirty days after replication, for the examination of witnesses out of Court, either party may set the cause down for hearing upon the pleadings.

Rule 110.

Whenever it is intended to offer oral proof in open Court, the party proposing it shall give due notice to the opposite party of the names of the witnesses, the matters to which they are to be examined, and of the reasons upon which he will move for an examination.

Rule 111.

All special motions, in reference to matters of practice, may be made in open court, or before a judge at chambers.

Rule 112.

No rule, or order, need be entered for the publication of testimony; but, so soon as the commissioner or examiner shall have completed the testimony offered, the party taking it shall cause the deposition to be filed in the clerk's office, and forthwith give notice thereof to the adverse party. Either party may thereupon enter a rule of course, that the clerk open the commission, or deposition, and file the same.

Rule 113.

Within four days after the clerk shall have prepared copies of the depositions, (provided the same were applied for in two days after the notice of the filing thereof,) the adverse party may give notice of exception, before a judge at chambers, to the proofs or any part of them, on account of any irregularity in taking the depositions, or executing the commissions; and, if no such notice of exception is given, all objections to the form, or manner, in which the proofs were taken, shall be deemed waived.

Rule 114.

When a motion for rehearing is made during the term at which a decree has been rendered, the enrolling or recording of such decree shall be suspended, until the final disposition of such motion by the Court.

Rule 115.

A master, or examiner, in taking proofs, or in matters of reference, shall not, without the written consent of all parties, or the authorization of one of the judges, adjourn proceedings pending before him, for a longer time than ten days.

III.

RULES ON APPEALS.

[Adopted April 28th, 1838, and took effect the 1st Monday of August, 1838.]

Rule 116.

An appeal can be taken from no other than final decrees.

Rule 117.

A decree shall be deemed final, when in a state for execution without further action of the Court below.

Rule 118.

Every appeal to the Circuit Court, in a cause of Admiralty and maritime jurisdiction, shall be in writing, signed by the party, or his proctor, and delivered to the clerk of the District Court from the decree of which the appeal shall be made; and it shall be returned to the Court, with the necessary documents and proceedings, within twenty days, and by the first day of the next term after the delivery thereof to the clerk, unless a longer time is allowed by the judge.

Rule 119.

The appeal shall briefly state the prayers, or allegations, of the parties to the suit, in the District Court, the proceedings in that Court, and the decree, with the time of rendering the same. It shall also state whether it is intended, on the appeal, to make new allegations, to pray different relief, or to seek a new decision on the facts, and the appellants shall be concluded in this behalf, by the appeal filed.

Rule 120.

A copy of the appeal shall, at the same time, be served on the proctor of the appellees in the Court below. And an affidavit of the due service of such copy, shall be filed with the appeal. And no process, or order, shall be necessary to bring the appellees into this Court.

Rule 121.

If, in the appeal, it shall not be intended to make new allegations, to pray different relief, nor to seek a new decision of the facts, then the pleadings, evidence, and decree, in the District Court, where the stipulations in the cause, and the clerk's account of the funds in Court, in the cause, if any, shall be certified to this Court with the appeal. But, in all cases, the statement of facts agreed between the parties, or settled by the judge of the District Court, and on file, according to the practice of that Court, may be certified in the place of the evidence at large.

Rule 122.

If it shall be intended to seek only a new decision of the facts, then the pleadings of the parties, with the stipulations in the cause, and the clerk's account of the funds in Court, if any, and the exhibits and depositions in the cause, shall be certified to this Court with the appeal, but the proofs need not be certified, unless especially required by the appellant or ordered by this Court.

Rule 123.

If it shall be intended to make new allegations, or to seek new relief, then the return to the petition of appeal shall only contain copies of the process issued upon the libel, and of the return thereof, the account of the clerk of the funds in Court, in the cause, the depositions and exhibits, and the stipulations in the cause.

Rule 124.

The appellant shall cause the notice of appeal, and an affidavit of the service of a copy thereof, with the documents required to be returned with the appeal, to be filed in this Court within four days after the return is completed by the clerk, otherwise the appeal shall not be received, and shall be deemed deserted; and a certificate in this behalf shall be made to the Court from which the appeal is made, which may proceed to execution of its decree.

Rule 125.

This Court shall be deemed possessed of the cause from the time of filing the appeal, with the documents required to be returned therewith, in this Court.

Rule 126.

If the appellee does not enter his appearance within the two first days in term succeeding the filing the appeal and proceedings, and affidavit of service of notice thereof on him, the appellant may proceed *ex parte* in the cause, and have such decree as the nature of the case may demand.

Rule 127.

No answer, or issue, need be given to the appeal. Each party may notice the cause for hearing, for the term to which the appeal is made, (if made in term time,) or, if made in vacation, for the term next succeeding.

Rule 128.

A writ of *inhibition* will be awarded, at the instance of the appellant, when circumstances require, to stay proceedings in the Court below, notice of such application having been previously given.

Rule 129.

A *mandamus* may, in like manner, be obtained, to compel a return of the appeal, when unreasonably delayed by the clerk, or Court, below.

Rule 130.

If the appellee shall have any cause to show why new allegations, or proofs, should not be offered, or new relief prayed, on the appeal, he shall give four days' notice thereof, and serve a copy of the affidavit containing the cause intended to be shown; and such cause shall be shown within the two first days of the term; otherwise, the appeal shall be allowed according to its terms.

Rule 131.

If new allegations are to be made, or different relief prayed, in this Court, then the libellant in the District Court shall exhibit in this Court a libel, on oath, within ten days, to which the adverse party shall, in twenty days, answer on oath, subject, in each case, to the extension of those periods, by order of either of the judges of this Court; and,

on a default in this behalf, the Court will, on motion, without notice, make such order for finally disposing of the cause, on the default of the party, as the nature of the case may require.

Rule 132.

After the libel and answer, whether newly filed in this Court, or certified from the District Court, shall be filed in this Court, the cause shall be proceeded into a hearing, as in other cases. But, where interrogatories have been answered in the District Court, or written testimony taken, the same may be used in this Court.

Rule 133.

The appellee may move this Court to have the decree made in the District Court carried into effect, subject to the judgment of this Court, or of the Supreme Court on appeal, upon giving his own stipulation to abide and perform the decree of such Courts; and this Court will make such order, unless the appellant shall give security, by the stipulation of himself and competent sureties, for payment of all damages and costs, on the appeal in this court, and in the Supreme Court, in such sums as this Court shall direct.

Rule 134.

In cases where an appeal shall lie from the decree of this Court, the final decree shall not be executed until ten days shall have elapsed from the pronouncing, or filing, of the decision of the Court.

Rule 135.

When appeal shall be made from the decree of this Court, the appellant shall, within four days from the pronouncing or filing of such decision, unless further time is allowed by the judge, make, and serve on the adverse party, a statement of the testimony on the trial, excepting such evidence as was in writing, which shall be properly referred to therein. The party on whom the same shall be served shall, in four days after such service, propose amendments thereto, or the statement shall be deemed acquiesced in, and the statement and amendments, unless acquiesced in, shall be submitted by the

appellant to the judge in four days afterwards for settlement; and the same, when settled, shall be engrossed by the clerk, and, with the written evidence, shall be deemed the proofs on which the decree is made, and shall operate as a stay of further proceedings in this Court.

Rule 136.

In all cases, in civil causes of Admiralty and maritime jurisdiction, not expressly provided for by the foregoing Rules of this Court, the Rules of Practice of the District Court for the Southern District of New York, being in force at the time, and whether established before or after these Rules, (not being inconsistent with these Rules,) are adopted, and are to be received as Rules of Practice in this Court.

IV.

MISCELLANEOUS RULES.

[Applicable, as each Rule may show, to practice in Common Law or Equity or Criminal Cases or on Appeals.]

Rule Without Number.

MARCH 4th, 1840.

In all cases in which persons convicted of offences against the statutes of the United States shall be sentenced to imprisonment, and the sentence shall not also specify that the party be kept at hard labor, it shall be the duty of the marshal to cause such party to be imprisoned in any one of the prisons within the city and county of New York which he may select for the purpose.

Rule 137.

NOVEMBER 11th, 1840.

Hereafter, jurors to serve in this Court shall be designated by ballot, according to the method of forming grand and petit juries now practised in the highest Court of law of this State, except that the panels shall be certified to the marshal by the clerk of this Court, or his deputy, if present at the drawing,

and except further that it shall not be necessary for either judge of this Court, or any judge of a State Court, or justice of the peace, to be present at the drawing, or for any notice thereof to be published.

Rule 138.

NOVEMBER 11th, 1840.

The jurors shall be drawn from the ballot-boxes kept by the clerk of the city and county of New York, in all cases except as is provided for and directed by Rule 140. In case of default or defect of jurors at term, or the discharge of a panel, and the summoning a new one in its place, the *venire* may be made returnable forthwith, or at any convenient day in term, and, in either such case, the drawing shall be at the time directed by the Court or either of the judges.

Rule 139.

NOVEMBER 11th, 1840.

In case a sufficient number of grand jurors shall not appear on the return of the *venire*, or, after appearing, shall be excused by the Court, or absent themselves, so that there shall be in attendance less than sixteen grand jurors duly qualified, the Court may, by order, direct the marshal forthwith to summon the number of persons necessary to complete such grand jury.

Rule 140.

NOVEMBER 11th, 1840.

The Court, or either of the judges, may, from time to time, by order to the clerk (to be by him endorsed on the *venire*,) direct the whole or any part of the jurors required to serve at any term, or portion of a term, to be returned from such parts of the district, besides the city and county of New York, as the Court or judge may designate, so as shall be most favorable to an impartial trial, and so as not to incur an unnecessary expense, or unduly to burthen the citizens of the district with jury service.

Rule 141.

NOVEMBER 11th, 1840.

In executing *venires* issued pursuant to Rule 140, the clerk assisting in drawing shall insert upon the panels, and certify,

the names of qualified jurors residing in the following places only in the counties hereafter named, (and shall omit the names of jurors drawn from the box who reside elsewhere,) to wit: in Stuyvesant and Hudson, in Columbia County; in Athens and Catskill, in Greene County; in Saugerties and Kingston, in Ulster County; in Poughkeepsie and Fishkill, in Dutchess County; in Newburgh and New Windsor, in Orange County; in Castleton, in Richmond County; in Brooklyn, Williamsburgh and Flatbush, in Kings County; and in Flushing and Jamaica, in Queens County.

Rule 142.

NOVEMBER 11th, 1840.

The clerks of the several counties within the district in which *venires* are to be executed, are empowered to draw jurors and certify panels for this Court, in the same manner practised for the highest Court of law of the State, when the clerk of this Court or his deputy is not present at the drawing.

Rule 143.

NOVEMBER 11th, 1840.

In case the clerk of the city and county of New York, or any county of this district, shall refuse to draw jurors for this Court, or shall not permit the officers of this Court to use the boxes provided and kept in his office for drawing jurors to serve in the State Court, the marshal shall immediately thereupon procure copies of the lists of jurors qualified to serve in the highest Court of law of the State, prepared, from time to time, pursuant to the law of the State, in the different wards of the city of New York, and in the other places designated in Rule 141, and file the same with the clerk of this Court, verified by the official certificate of the officers with whom the same are filed or deposited, or by that of the officers required by the law of the State to prepare and authenticate them, or, if such proof is refused, or cannot be obtained, then by affidavit; and the clerk shall thereupon prepare proper boxes and ballots, conformably to the practice in the State Courts, and the drawing of jurors from such boxes shall be made and conducted thereafter by the marshal and clerk according to the mode now practised under

the law of the State, except that a publication of any previous notice thereof, or the attendance thereat of either of the judges of this Court, or any other magistrate, shall not be necessary.

MARCH 12th, 1841.

The clerk of this Court, and also the clerk of the District Court of the United States for the Southern District of New York, and the chief clerk or deputy of each of said clerks (the said chief clerk or deputy being designated by appointment duly filed in the office of the said clerks respectively), for the time being, shall, *ex-officio*, be commissioners to take affidavits and acknowledgments of bail in civil causes depending in the Courts of the United States, pursuant to the provisions of the Acts of Congress in that behalf; and the said clerks and deputies are also hereby respectively authorized and empowered to take bail within the Southern District of New York, pursuant to the Act of Congress of March 2d, 1793.

APRIL 17th, 1845.

So much of standing Rule 99 of this Court, as prohibits motions to set down causes placed on the calendar for a particular day, and also so much of standing Rule 104, as designates and appoints the general deputy of the marshal of the Southern District of New York, *ex-officio*, a Commissioner to take affidavits and acknowledgments of bail, in civil causes depending in the Courts of the United States, be, and the same are, hereby abrogated and repealed, but no other portions of the said rules are to be affected by this order.

Masters and Examiners in Chancery, designated and appointed by this Court to act as such, on the Equity side thereof, shall, *ex-officio*, be Commissioners to take affidavits and acknowledgments of bail, in civil causes depending in the Courts of the United States, and to take bail within the Southern District of New York, pursuant to the provisions of the several Acts of Congress in that behalf; and every such Master in Chancery for the time being is hereby designated and appointed, *ex-officio*, Commissioner as aforesaid. This rule or order is not to affect the rule or order of the Court in this behalf, entered March 12th, 1841.

JUNE 28th, 1845.

In place of the provisions of Rule 96 of this Court, for the taxation of costs of parties, the costs of parties (their attorneys, solicitors and counsel,) shall be allowed and taxed conformably to the regulation and appointment of costs made in the last proviso but one to section one, No. 167, of the Act of Congress approved May 18th, 1842, entitled an "An Act making appropriations for the civil and diplomatic expenses of Government for the year 1842."

For services rendered pursuant to the course of practice of this Court, for which no fees are appointed specially by Acts of Congress, or of the State of New York, in force, there shall be allowed, on taxation, the same rates of compensation as, by the usages or adjudications of this Court, or the Supreme Court of the United States, were allowed therefor at the time of the passage of the Act of May 18th, 1842, aforesaid.

In all cases of taxation of costs, fees shall be allowed, as having been appointed by the laws of the State, only according to the rates allowed for like services, in similar cases, in the highest courts of law or equity, of original jurisdiction, of the State of New York.

SEPTEMBER 2d, 1845.

On appeals, no paper proceedings shall be read in this Court, unless they be papers duly sent up by the Court below, and on file in this Court, or original papers on the files of this Court, or copies of such papers duly certified by the clerk of this Court.

MAY 18th, 1846.

Hereafter, on motions for an injunction, because of the infringement of a patent right, the complainant shall not be permitted to give evidence to rebut the cause shown by the defendant against the allowance thereof, other than to a denial that the defendant uses the discovery or invention claimed by the complainant, or to a claim by the defendant that he acts under an assignment or license from the patentee; and, on motions for injunctions to stay waste, only to a defence set up justifying the waste; and, in neither case shall such supplementary or supporting proofs be received, unless the Court, or one of the judges, on satisfactory cause shown, shall, by

order previously made, allow the same to be given, and so much of Rule 107, of the standing Rules in Equity of this Court, adopted April 28th, 1838, as may be inconsistent herewith, is repealed.

Motions for injunctions shall be brought on by the complainant on the day named in the notice, if the Court is then in session, and, in default thereof, the defendant may move that the notice be discharged for the term, with costs, unless further time is given, or the hearing is delayed by order of the Court.

APRIL 1st, 1850.

No action, real or personal, shall abate by the death, marriage, or other disability of either party, or by the transfer of any interest therein, if the cause of action survive or continue. In case of the death, marriage, or other disability of a party, the Court, on motion, may allow the cause to be continued by or against the successor in interest, on the usual notice to the party interested, or such other notice as may be directed by the Court.

OCTOBER 10th, 1850.

The clerk of this Court, and the clerk of the District Court of the United States for the Southern District of New York, and also the chief clerk or deputy of each of said clerks, and also the county judge of each of the counties within the Southern District of the State of New York, and also the standing masters in Chancery appointed by this Court, (such officers respectively being of the degree of counsellor at law, of this or of the Supreme Court of the State of New York,) shall each be, *ex-officio*, and is hereby appointed by this Court, a commissioner of this Court, to take affidavits in civil causes depending in the Courts of the United States, and to execute and perform all the powers conferred by the Act of Congress, entitled, "An Act in addition to the Act entitled, 'An Act to establish the judicial Courts of the United States,'" approved March 2d, 1793; and the Act of Congress entitled "An Act for the more convenient taking of affidavits and bail in civil causes depending in the Courts of the United States," approved February 20th, 1812; and the Act of Congress entitled "An Act in addition to an Act entitled, 'An Act for the more convenient

taking of affidavits and bail in civil causes depending in the Courts of the United States,' " approved March 1st, 1817; and the Act of Congress entitled, " An Act further supplementary to an Act entitled, ' An Act to establish the judicial Courts of the United States,' passed the 24th September, 1789," approved August 23d, 1842; and the Act entitled, " An Act to amend and supplementary to the Act entitled, ' An Act respecting fugitives from justice, and persons escaping from the service of their masters,' approved February 12th, 1793," approved September 18th, 1850.

JANUARY 20th, 1851.

The clerk of this Court, and the clerk of the District Court of the United States for the Southern District of New York, and also the chief clerk or deputy of each of said clerks, (such chief clerk or deputy being designated in writing by the clerk appointing him, and the appointment being approved by the circuit judge of this circuit, or, in case of his absence from the district, by the district judge, and such designation, with the approval endorsed thereon, being filed in his office by each of the said clerks respectively,) and also the standing masters in Chancery appointed by this Court, and also the county judge of each county within the Southern District of New York, other than the county of Kings and the city and county of New York, (if the said officers before named shall be each of the degree of counsellor at law of this Court, or of the Supreme Court of the State of New York,) whether said officers are in office at the time of making this order, or shall be subsequently appointed, or elected thereto, shall be, whilst holding such office, *ex-officio*, commissioners of this Court, and each of such officers, whilst in office, is hereby appointed a commissioner to take affidavits in civil causes depending in the Courts of the United States, and to execute all the powers, and perform all the duties, authorized or conferred by the Act of Congress entitled, " An Act in addition to the Act entitled, ' An Act to establish the judicial Courts of the United States,' " approved March 2d, 1793; and the Act of Congress entitled, " An Act for the more convenient taking of affidavits and bail in civil causes depending in the Courts of the United States," approved February 20th, 1812; and the Act of Congress entitled, " An

Act in addition to the Act entitled, 'An Act for the more convenient taking of affidavits and bail in civil causes depending in the Courts of the United States,' approved March 1st, 1817; and the Act of Congress entitled, "An Act further supplementary to an Act entitled, 'An Act to establish the judicial Courts of the United States,' passed the 24th September, 1789," approved August 23d, 1842; and the Act entitled, "An Act to amend and supplementary to the Act entitled, 'An Act respecting fugitives from justice, and persons escaping from the service of their masters,' approved February 12th, 1793," approved September 18th, 1850; or of any other Act of Congress having relation to such commissioners and their duties or powers.

JANUARY 29th, 1851.

Except as may be from time to time otherwise specially ordered by the Court, when hereafter a *venire* shall issue pursuant to the standing rules of the Court, for the purpose of summoning petit jurors to serve in this Court, the marshal or other officer to whom such *venire* shall be directed, shall, with the clerk, or his deputy, repair therewith to the office of the clerk of the city and county of New York, and there, at least ten days before the return of such *venire*, in the presence of the said clerk of the city and county, and of the marshal, or other such officer, the clerk or deputy shall proceed, if the clerk of said city and county shall consent thereto, to draw out of the box of jurors qualified, according as the law of the State of New York was on the 20th day of July, 1840, to serve in the highest Court of law thereof, kept by the clerk of the said city and county, the names of so many jurors as by the said *venire* shall be required to be summoned. And the clerk of this Court shall immediately make out and certify under his hand a panel of the jurors so drawn, with their respective additions and places of abode, and deliver the same to the marshal or other such officer, and the persons so certified shall be summoned to serve as jurors pursuant to such *venire*, and, if any of the persons whose names are so drawn shall be dead, or removed from the city and county, or not qualified as aforesaid, within the knowledge of the clerk or marshal, then such names shall be disregarded, and the clerk shall forthwith pro-

ceed to draw out of the said box other names, until the said panel shall be completed.

Whenever the Court shall order petit jurors under such *venire* to be taken wholly, or in part, from any county or counties within the District other than the city and county of New York, the panel or panels thereof shall be drawn, certified, and summoned, in like manner as is directed in the preceding order or rule.

OCTOBER TERM, 1851.

Whereas, Samuel Blatchford, Esq., counsellor-at-law, has been appointed Reporter of the decisions of the Circuit Judge in the Circuit Court of the United States held in the Second Circuit thereof:

Ordered, That the solicitors, attorneys and proctors of said Court, in case of motions for new trials, demurrers, writs of error, appeals in Admiralty, and cases in Equity, bringing on the argument, furnish the said Reporter with a copy of the case, demurrer book, error book, apostles, including all proofs in the Court below, and in this Court, in the case, and of the pleadings and proofs in Equity, as the case may be, at or before the commencement of the argument.

JANUARY 27th, 1853.

All and each of the Commissioners appointed by this Court, by order or rule, entered January 20th, 1851, to take affidavits in civil causes depending in the Courts of the United States, &c., be, and the said Commissioners are hereby, appointed and authorized to act as Commissioners, and each of them is hereby appointed, to act as a Commissioner, under the provisions of the Act of Congress entitled, "An Act for giving effect to certain treaty stipulations between this and foreign governments for the apprehension and delivering up of certain offenders," approved August 12th, 1848.

MAY 7th, 1853.

The clerk shall issue a *venire* to the marshal for a grand jury to be in attendance at the commencement of each regular term of this Court.

COSTS TAXABLE TO COMMISSIONERS APPOINTED AND ACTING ON REFERENCES, UNDER RULE 44 OF THE RULES OF PRACTICE FOR THE COURTS OF THE UNITED STATES IN ADMIRALTY AND MARITIME JURISDICTION, PRESCRIBED BY THE SUPREME COURT OF THE UNITED STATES AT THE JANUARY TERM, 1845, AND UNDER RULES OF PRACTICE IN ADMIRALTY, ADOPTED IN JANUARY TERM, 1839, BY THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

It being made a question of taxation, what fees or compensation may be lawfully allowed to said officers, for services rendered by them, under their appointments by authority of the above Rules of Court; and it appearing, that the Act of Congress entitled, "An Act to regulate the fees and costs to be allowed Clerks, Marshals, and Attorneys of the Circuit and District Courts of the United States, and for other purposes," approved February 26th, 1853, (10 U. S. Stat. at Large, 161,) makes no provision for compensating Commissioners appointed by the Courts under the aforesaid Rules, for their services rendered in aid of the administration of justice, in the matters and cases therein specified; and we being of opinion, that these special officers of the Court do not come strictly within the Act, and that, upon the usages and doctrines of Courts of the United States, officers called upon to render services in those Courts, according to their rules and modes of practice, for which no specific fees or costs are appointed by statute law, will be awarded compensation therefor by the Courts respectively in which the services are performed, corresponding in amount to that allowed by law in the State, for similar services rendered by the State officers, in a like capacity, particularly in Chancery procedures, (1 Blatchf. C. C. R., 652; *Hathaway v. Roach*, 2 Woodb. & M., 63;) and it further appearing to us, that such is an equitable and sound rule to be applied in relation to this class of officers, especially as the above cited statute law of costs contains no prohibition of compensation to them by authority of the Courts otherwise than through a positive appointment by statutory law: We are, therefore, of opinion, that such Commissioners are entitled to have taxed in their behalf, by the proper taxing officers, the rate of fees or costs allowable in the Court of Chancery of the State of New

York to Masters in Chancery of that Court, for services therein, performed by them, on the first of September, 1845, being the time the Rule of Practice aforesaid adopted by the Supreme Court went into operation, unless in particulars in which the rate of allowance then prevailing in the State Court shall have been rescinded or modified by subsequent regulations made by orders of the Courts of the United States; and we designate as proper subjects of taxation, in cases where those services have been actually performed by such Commissioners, in Admiralty and Maritime causes referred to them pursuant to the aforesaid Rules, the following items, embraced in the Rules and Orders of the Court of Chancery of the State of New York, revised and established by Chancellor Walworth, in 1844, under the head of "Master's Fees," (pages 190, 191,) to wit:

Commissioners' Costs.

For signing every summons for a witness or party to attend a reference, *twelve cents*.

For attending at the time and place, and adjourning the same at request, or upon reasonable cause, *one dollar*.

Attendance and hearing every argument upon any matter referred to him, when litigated, *three dollars*; and when he proceeds *ex parte*, *one dollar*.

Attending and settling his report after argument, if both parties attend and litigate the same, *three dollars*; if he proceeds *ex parte*, *one dollar*.

For writing out and certifying the testimony of witnesses taken orally before him on the hearing, to file with his report, for every folio of 100 words, *twenty cents*.

Copies of the same, furnished, on request, to either party, for each folio, *ten cents*.

Drawing every report in pursuance of an order of reference to him, (exclusive of schedules and the written proofs,) for every folio, *twenty cents*.

Drawing all schedules to be annexed to reports, for every folio, *ten cents*.

Copies of reports and schedules, to be filed, for every folio, *ten cents*.

Copies of reports and schedules and all other proceedings, furnished by him to the parties, upon request, for every folio, *six cents*.

Marking every exhibit produced before him on a reference, with the title of the cause, and signing the same, *six cents*.

May 28th, 1859.

S. NELSON,
SAML. R. BETTS.

Note.—The foregoing Rule was adopted in the Circuit Court of the United States for the Southern District of New York, as well as in the District Court for said District on the day of the date thereof.

SEPTEMBER 21st, 1859.

All money brought into Court in any suits pending in this Court, shall be deposited by the clerk of the Court in the United States Trust Company, upon such terms as shall be agreed between the clerk and the Company, and approved of by the Court.

NOVEMBER 11th, 1867.

It having been found impracticable to obtain jurors for the Courts of the United States in this District from the jury boxes used by the authorities of the State of New York, in the city and county of New York, for the procuring of juries for the Courts of said State, in said city and county, It is now ordered, that the clerk of this Court, and the clerk of the District Court of the United States for this District, make out and file in the office of the clerk of this Court, a list of persons to serve as jurors in the Courts of the United States for this District, and that such list be made out in the same manner as, by the laws of the State of New York, the public officers charged with the duty of making out the list of jurors to serve as jurymen in the Courts of said State, in and for said city and county, are required to make out such list. And it is further ordered, that the said clerks, from time to time, correct and revise such list, as they may deem it necessary so to do, to the end that such list may be made and kept, so far as practicable, in conformity with the laws of the State of New York; and it is further ordered, that, from the list so made and filed, grand and petit jurors shall be selected, and shall be drawn by lot, in accordance, so far as practicable, with the laws of the State of New

York, by the said clerks, as from time to time the same may be ordered by the Courts of the United States for this District, and a list of the persons so drawn, certified by said clerk, shall be attached to the writ of *venire* issued to the marshal for the summoning of such jurors; and it is further ordered, that as to all matters relating to the selecting, drawing and summoning of jurors for said Courts, the said clerks follow, so far as practicable, the provisions in respect thereto contained in the laws of the State of New York.

And it is further ordered, that the order made by this Court on the 29th day of January, 1851, in regard to the drawing and summoning of jurors, be and the same is hereby vacated.

NOVEMBER 10th, 1868.

In taking testimony, all Masters, Examiners, Referees and Commissioners shall, where testimony is written down by question and answer, number the questions put to each witness continuously, from the commencement of his direct examination to the final close of his examination, direct and cross.

NOVEMBER 17th, 1868.

On the hearing, in this Court, of an appeal from the District Court, on any record which shall hereafter be transmitted from the District Court, no statement or report found in such record, of any testimony given *viva voce*, in open court, in the District Court, will be considered by this Court as evidence, unless such testimony shall appear, on its face, to have been taken down in the same manner as in jury trials in common law issues, and not *verbatim*, as in depositions *de bene esse*.

JANUARY 14th, 1871.

Issues, whether of law or fact, and appeals, in this Court, may be noticed for trial or hearing, and placed upon the calendar, by either party; and either party noticing the same may, when the cause shall be called, move the trial or hearing, and take verdict or judgment, or order to dismiss the suit for not going to trial, as the Court shall direct.

JUNE 27th, 1871.

On the hearing of appeals in Admiralty, the appellant shall furnish to the Court a printed copy of the Apostles, certified

by the clerk of this Court, unless, by special order of the Court, obtained before the hearing, such printing, or some part thereof, shall be dispensed with.

OCTOBER 2d, 1872.

Rule 55 of the Rules of the Circuit Court of the United States for the Southern District of New York is amended so as to read as follows :

When a cause is noticed for trial or argument for the first day of the term, a notice thereof, with a note of the issue and of the pleadings, and of the attorneys' names, shall be delivered to the clerk at least eight days next preceding the term ; and the clerk shall, as early as the following Thursday, have the calendar of causes to be tried made up, arranging them according to the dates of their issues. And no cause shall be put upon the calendar without the special order of the Court, unless the note of issue shall be furnished as is hereby required.

FEBRUARY 26th, 1873.

In order to facilitate the dispatch of business at the criminal terms of the Circuit Court of the United States for the Southern District of New York, the following calendar Rules are adopted for those terms :

1. Four days prior to the commencement of each criminal term, the clerk of the Court shall prepare a calendar of all the causes which shall have been designated by the District Attorney, in a written notice, as causes which the Government is ready to try at such term. The causes will be arranged upon the calendar in the order designated in the notice of the District Attorney, and no cause not so designated shall be placed upon the calendar ; provided, that indictments found after the commencement of any criminal term may be placed upon the calendar of such term, upon special order of the Judge.

2. At the opening of each criminal term, all the causes upon the calendar for that term will be called, for the purpose of enabling counsel to fix upon days of the term on which the various causes are to be tried. In case of failure of counsel in any cause to agree upon a day of trial, the day will be fixed by the Court.

3. When a day has been assigned for the trial of any cause, such cause will not thereafter be postponed for the term on the

application of a defendant, except upon showing facts to have arisen since the assignment of the cause, which entitle the defendant to postpone the trial for the term.

4. Every cause placed upon the calendar of any term upon the request of the District Attorney, which shall not be tried during such term for either of the following reasons, to wit, because of the failure of the District Attorney to apply to have a day in such term assigned for the trial, or because of the omission of the District Attorney to move the trial at the time when the cause is called for trial, shall be stricken off the calendar, as for want of prosecution, and, unless otherwise specially ordered, shall not thereafter be placed upon any calendar, except by permission of the Judge, obtained on notice to the defendant, or his attorney, and upon showing proper reasons for the failure to try the cause when upon the calendar.

5. All assigned causes which are not reached for trial during the term of their assignment shall, without further notice to the clerk, be placed at the head of the calendar of the next criminal term, in the order of their assignment, and shall stand as causes assigned in that order, to be tried upon the first day of the said next term.

6. Motions to quash the indictment in any cause upon the calendar of any term must be made upon the opening day of the term, unless otherwise ordered.

7. The clerk will, for the information of the Court, attach to each calendar a list of the names of all persons under indictment in the Court, who are in custody.

NOVEMBER 21st, 1873.

Hereafter, in all cases brought to this Court, from the District Court, by writ of error, or appeal, or petition of review, the clerk of the District Court shall annex to, and transmit with, the record or proceedings of that Court, a copy of any opinion or opinions filed in that Court upon the decision of any matter contained in such record or proceedings, and, if no such opinion has been filed, such clerk shall so certify; and the said opinions, or such certificate, shall be considered as filed in the case in this Court, and a copy thereof shall be transmitted, with the record, to the Supreme Court, in the cases provided for by

the amendment to the eighth rule of that Court, promulgated April 28th, 1873.

MARCH 16th, 1875.

For the purpose of carrying out more efficiently the provisions of the recent Act of Congress, (Act of February 16th, 1875, § 1, 18 *U. S. Stat. at Large*, 315,) after it shall take effect, in regard to the finding of facts and of conclusions of law by the Circuit Court, in cases in Admiralty, on appeal, each party to an appeal shall furnish to the Court, at the commencement of the hearing, and shall serve on the proctor for each of the other parties to the appeal, five days before the hearing, a printed finding of facts and conclusions of law, as proposed, printed on writing paper, on only one side. If this be not done, the party in default will not be heard on the appeal, and if the party in default be the appellant, his appeal will be dismissed.

JULY 1st, 1876.

The cases and points, and all other papers furnished to the Court in calendar causes, other than causes for trial before a jury and reviews in bankruptcy, shall be printed, unless, by special order of the Court obtained eight days before the hearing, such printing or some part thereof shall be dispensed with. The appellant in appeals, the plaintiff in error in writs of error, and the moving party on motions for a new trial and the argument of demurrers, shall cause the papers to be printed. In all other cases, each party shall cause to be printed the pleadings, proofs and papers filed on his behalf. At the beginning of the argument each party shall furnish to his adversary three copies of his printed points, and, at least eight days before the argument, three printed copies of all other papers shall be furnished by the party printing the same to the adverse party. A party recovering costs shall be allowed his disbursements for the printing required of him by this rule.

[Amended by Rule adopted May 18th, 1878. See page 440.]

JANUARY 6th, 1877.

On filing the written consents of all the parties, orders may be entered in the rule books, in cases at law or in equity, with

the same effect as if directed upon such consent by a Judge, except final decrees in equity.

[See Rules adopted May 6th, 1879, and May 26th, 1882, printed at pages 443 and 446 respectively.]

FEBRUARY 1st, 1877.

1. Notice of an intended application to the Circuit Court for the exercise of the general superintendence and jurisdiction conferred by section 4986 of the Revised Statutes of the United States, must be given within ten days after the entry in the District Court of the order complained of, by filing such notice in the clerk's office of that Court, and serving the same on the adverse party. The application must be made within thirty days, after the entry of such order, or within such further time as may be allowed by an order of the District Judge filed within said thirty days in the clerk's office of that Court. An application cannot be made at a later period.

2. Except where special provision is otherwise made by statute, or where the aggrieved party proceeds by bill in equity, the application must be by petition filed in the office of the clerk of the Circuit Court, and verified by oath. The petition must designate the order complained of, and set forth the facts of the case, so far as may be necessary to show the errors, whether of fact or of law, alleged to have occurred in the District Court, and must point out such errors specifically, and the relief sought therefor.

3. The petitioner must, within five days after filing the petition, procure from the clerk of the Circuit Court a certificate of the filing of such petition, designating the order therein complained of, by its date, and file the same in the office of the clerk of the District Court.

4. Within ten days after filing the petition, the petitioner must serve a copy thereof on the adverse party, who may file an answer thereto, verified by oath, within ten days after such service, and must, in that case, serve a copy of the answer on the petitioner within the further period of ten days. The petitioner may, within ten days thereafter, file a reply to the answer, and serve a copy thereof on the adverse party. The clerk may once extend either of these periods, by order made before its expiration.

5. The application will be heard upon these papers only, unless the Court shall, of its own motion, otherwise direct. As soon as the case is disposed of, the clerk of the Circuit Court must certify the order to the District Court.

FEBRUARY 5th, 1877.

In actions at law, a consent to a reference of the whole issue must likewise contain a provision that judgment shall not be entered until after ten days' notice of the filing of the report of the referee, and of the judgment proposed to be entered thereon. After a reference, at any time before the entry of judgment, either party may move for a new trial upon a case or exceptions, and, if such motion be denied, the decision of the motion and the questions involved in it may be entered on the record, as if it had been a ruling made upon a trial by the judge without a jury, and excepted to in like manner. When a motion for a new trial is intended to be made, the Court may extend the time for entering judgment, upon the application of the moving party, and may stay all other proceedings until the decision of the motion.

MAY 18th, 1878.

The rule adopted by the Circuit Court of the United States for the Southern District of New York, to take effect July 1st, 1876, is hereby amended so as to read as follows :

“The cases and points, and all other papers furnished to the Court in calendar causes, other than causes for trial before a jury and reviews in bankruptcy, shall be printed, unless, by special order of the Court obtained eight days before the hearing, such printing or some part thereof shall be dispensed with. The appellant, in appeals, the plaintiff in error in writs of error, the excepting party in exceptions to master's reports, and the moving party, on motions for a new trial and the argument of demurrers, shall cause the papers to be printed, and such papers shall include all the papers necessary for the proper presentation of the case on both sides. In all other cases, each party shall cause to be printed the pleadings, proofs and papers filed on his behalf. At the beginning of the argument each party shall furnish to his adversary three copies of his printed points, and, at least eight days

before the argument, three printed copies of all other papers shall be furnished by the party printing the same to the adverse party. A party recovering costs shall be allowed his disbursements for the printing required of him by this rule."

[For the Rule of July 1st, 1876, see page 438.]

JUNE 15th, 1878.

Ordered, that no warrant of arrest shall be issued by a Commissioner of the Circuit Court in a criminal case, unless such warrant is applied for by the District Attorney, or by one of his regularly appointed assistants, in person, or by the authority of such District Attorney, or assistant, produced in writing to the Commissioner. No account of any Commissioner for issuing a warrant in any other case will be approved by a Judge; and every account shall be accompanied by an affidavit of the Commissioner, showing by whom each warrant was applied for, and on what authority. This order shall not apply to extradition cases.

SEPTEMBER 2d, 1878.

The appellate docket shall consist of five divisions: (1.) Appeals in Admiralty; (2.) Writs of Error; (3.) Appeals in equity cases; (4.) Appeals in bankruptcy; (5.) Reviews in bankruptcy.

The docket of original causes shall consist of four divisions: (1.) Equity cases, embracing pleas, demurrers, cases to be heard on pleadings and proofs, and cases to be heard on pleadings alone; (2.) Issues of law in suits at law, upon the pleadings or upon special verdict; (3.) Issues of fact triable by a jury, between private parties; (4.) Issues of fact triable by a jury, to which the United States is a party, including customs and revenue suits against collectors.

For each division of the appellate docket, and for each division of the docket of original causes, there shall be a separate permanent calendar, the first of which shall be made up for the October Term in the year 1878, and shall continue to be the permanent calendar, subject to the addition to it of new cases, until the Court shall order a new permanent calendar to be made. The causes remaining on each permanent calendar shall be renumbered for every October Term.

In each division of the appellate calendar the causes shall, originally and at every re-numbering, be arranged and numbered thereon according to the priority of the filing of the return in this Court. Pleas and demurrers in equity cases, set down by order for hearing, shall be numbered on the calendar as of the date of such order. Pleas replied to, and cases to be heard on pleadings and proofs, and cases to be heard on pleadings alone, as of the time of filing the last pleading. Issues of law in suits at law, upon the pleadings, as of the date of the issue. Special verdicts, as of their date. Issues of fact triable by a jury, as of the date of the issue.

The note of issue filed with the clerk shall specify the proper date.

Motions for a new trial, on cases or exceptions, shall not be put on any calendar, but must be made before the Judge who tried the cause, at any such time and place as he may direct.

Only one note of issue to the clerk and one notice of trial or hearing to the opposite party, shall be necessary for any permanent calendar. The cause will then remain and stand for hearing or trial, until it is reached and called, when it may be moved by either party. If it be passed upon the regular call, no postponement being granted by the Court, it will go to the foot of the calendar. If it be a second time thus passed, it will be marked off the calendar. It may afterward be renoticed and a new vote of issue filed, stating the date at which it was last passed, as of which date it may again be placed on the calendar.

OCTOBER 11th, 1878.

In pursuance of the provisions of section 915 of an Act entitled "An Act to revise and consolidate the statutes of the United States, in force on the first day of December, Anno Domini one thousand eight hundred and seventy-three," approved June 22d, 1874,—it is ordered, that the provisions of the Act of the Legislature of the State of New York entitled, "An Act relating to Courts, officers of justice and civil proceedings," passed June 2d, 1876, and the provisions of any Act heretofore passed by said Legislature, amending said last named Act, so far as such proceedings relate to a remedy by attachment against the property of a defendant, are hereby adopted

by this Court as rules of this Court in respect to a remedy by attachment, against the property of a defendant in a common-law cause in this Court.

[See Rule adopted December 29th, 1881, printed on page 445.]

MARCH 12th, 1879.

For the purpose of securing a right of review to defendants in criminal cases tried in the Circuit Court of the United States for the Southern District of New York, hereafter, in all such cases, where the defendant shall, within three days after conviction, file notice of a motion for a new trial upon exceptions taken at the trial, or a motion in arrest of judgment, sentence will be deferred until the next criminal term of the Court, in order to give opportunity for the hearing of such motion before a Court to be composed of the Circuit Judge and the two District Judges authorized by law to hold the said terms of said Court, under § 613 of the Revised Statutes of the United States. The Court will sit for the purpose of such hearings on the second day of each of the exclusively criminal terms provided for in § 658 of said Revised Statutes, at which time either party may move the hearing, and the same will be had upon the minutes of the trial, as settled by the Judge who tried the case. The minutes so settled shall be printed by the moving party, and five copies thereof shall be filed before the first day of the term next subsequent to the term at which the trial was had, one of which copies shall be delivered to the District Attorney, at his request. A failure to file such copies will be deemed an abandonment of any motion of which notice may have been given in pursuance of this rule.

MAY 6th, 1879.

The rule of January 6th, 1877, in these words: "On filing the written consents of all the parties, orders may be entered in the rule-books, in causes at law or in equity, with the same effect as if directed upon such consent by a Judge, except final decrees in equity," is hereby abrogated.

[See Rules adopted January 6th, 1877, and May 26th, 1882, printed at pages 438 and 446 respectively.]

SEPTEMBER 12th, 1879.

In pursuance of the provisions of the recent Act of the

Congress of the United States on the subject of the drawing of jurors, Samuel D. Babcock, of the city of New York, is hereby appointed a commissioner to discharge the duties prescribed by that Act, in this Court; and the said Commissioner and the clerk of this Court shall, as soon as practicable after the entry of this order, place in a box the names of twelve hundred persons to serve as grand jurors and as petit jurors in this Court, each on a separate slip of paper, each of which persons shall possess the qualifications prescribed in section 800 of the Revised Statutes of the United States, being the qualification set forth in sections 1079, 1080, and 1029 of the Code of Civil Procedure of the State of New York, passed June 2d, 1876, the said clerk and the said commissioner each placing one name in said box alternately, commencing with said clerk, without reference to party affiliations, until the said number of twelve hundred names shall have been placed therein. All jurors, grand and petit, to serve in this Court, shall be publicly drawn by the said clerk from the said box, and from the names so placed therein; and, at the time of the drawing of any juror, the said box shall contain the names of not less than eight hundred persons, so placed therein. The said commissioner and the said clerk shall, from time to time, as may be necessary, place in said box, in manner aforesaid, the names of additional persons, or the same persons, or both, possessing said qualifications, so that the number of said names shall not, when any juror is drawn, be less than eight hundred nor more than twelve hundred. The box shall be locked and retained by the clerk and the key shall be kept by the commissioner. The box shall be provided by the marshal. The clerk shall post upon the outer door of the clerk's office notice of the time and place of drawing jurors, at least five days prior to the drawing, except when jurors are summoned during a session of the Court.

[See Amendment of November 22d, 1880, printed on page 444.]

NOVEMBER 22d, 1880.

The order made by this Court on the twelfth day of September, in the year of our Lord, one thousand eight hundred and seventy-nine, in relation to the drawing of jurors, is hereby amended so as to read as follows:

"In pursuance of the provisions of the Act of Congress of the United States on the subject of the drawing of jurors, approved June 30th, 1879, Samuel D. Babcock, of the city of New York, is hereby appointed a commissioner to discharge the duties prescribed by that Act, in this Court; and the said commissioner and the clerk of this Court shall, as soon as practicable after the entry of this order, place in a box the names of two thousand persons to serve as grand jurors and as petit jurors in this Court, each on a separate slip of paper, each of which persons shall possess the qualifications prescribed in section 800 of the Revised Statutes of the United States, being the qualifications set forth in sections 1079, 1086, and 1029 of the Code of Civil Procedure of the State of New York, passed June 2d, 1876, the said clerk and the said commissioner each placing one name in said box alternately, commencing with said clerk, without reference to party affiliations, until the said number of two thousand names shall have been placed therein. All jurors, grand and petit, to serve in this Court, shall be publicly drawn by the said clerk from the said box, and from the names so placed therein; and, at the time of the drawing of any juror, the said box shall contain the names of not less than eight hundred persons, so placed therein. The said commissioner and the said clerk, shall, from time to time, as may be necessary, place in said box, in manner aforesaid, the names of additional persons, or the same persons, or both, possessing said qualifications, so that the number of said names shall not, when any juror is drawn, be less than eight hundred nor more than two thousand. The box shall be locked and retained by the clerk, and the key shall be kept by the commissioner. The box shall be provided by the marshal. The clerk shall post upon the outer door of the clerk's office notice of the time and place of drawing jurors, at least five days prior to the drawing, except when jurors are summoned during a session of the Court."

[See Rule Adopted September 12th, 1879, printed on page 443.]

DECEMBER 29th, 1881.

In pursuance of the provisions of sections 915 and 916 of an Act, entitled, "An act to revise and consolidate the statutes of the United States in force on the first day of December, Anno

Domini one thousand eight hundred and seventy-three," approved June 22d, 1874, it is ordered, that the provisions of the Act of the Legislature of the State of New York, entitled "An Act relating to Courts, officers of justice and civil proceedings," passed June 2d, 1876, as amended by the Act of said Legislature, entitled "An Act supplemental to the Code of Civil Procedure," passed May 6th, 1880, and the provisions of any other Act heretofore passed by said Legislature amending either of said Acts, so far as such provisions relate to a remedy by attachment against the property of a defendant, or to a remedy by execution, or otherwise, to reach the property of a judgment-debtor, are hereby adopted by this Court as rules of this Court in respect to a remedy by attachment against the property of a defendant, in a common law cause in this Court, and in respect to a remedy by execution, or otherwise, to reach the property of a judgment-debtor, in a common law cause in this Court.

[See Rule Adopted October 11th, 1878, printed at page 442.]

MAY 26th, 1882.

On filing the written consent of all the attorneys for the parties, orders for discontinuance, extensions of time, and substitutions of attorneys, may be entered in the Rule book, in cases at law, or in equity, without the special direction of a judge.

[See Rules adopted January 6th, 1877, and May 6th, 1879, printed at pages 438 and 443 respectively.]

OCTOBER 1st, 1883.

At the jury terms for trials of issues in which the United States is not a party or interested, a day calendar shall be made from causes on the general calendar. The first twelve causes on the calendar shall comprise the day calendar for the first day of the term. For each subsequent day, six causes, to be selected by the clerk from all causes noticed for the day calendar, according to their order on the general calendar, shall comprise the day calendar. Causes that have not been placed upon the day calendar may be reserved for a future day, by filing a consent of the attorneys, specifying the day, with the clerk, but will not have priority over causes previously placed

on the day calendar, unless the Court, for special reasons, so directs. Causes will be placed on the day calendar upon the notice of either party filed with the clerk by 3 o'clock P.M. of the preceding day. A copy of the day calendar for each succeeding day shall be conspicuously posted by the clerk, in the Court room, by 4 o'clock P.M. After the day calendar is thus posted, no change shall be made, and each cause must be disposed of for the term, when reached, unless, for sufficient cause shown, the Court may otherwise direct. Causes not reserved by consent, or noticed for the day calendar before causes having a later date of issue shall have been placed thereon, shall be deemed passed for the term.

OCTOBER 1st, 1883.

When a cause has been removed from a State Court, either party may forthwith cause a copy of the record to be filed in this Court, and thereupon may notice the cause for trial in this Court, although the term has commenced ; and, upon filing a note of issue, may place the cause upon the calendar, as of the date when the record was filed. Such cause will not be placed on the calendar until five days after the filing of the note of issue. When the cause has been duly noticed for trial in the State Court before removal, no new notice of trial in this Court will be required, but the party filing a note of issue shall, on the day of filing the same, serve notice thereof on the adverse party.

OCTOBER 8th, 1883.

Ordered, that the United States Marshal for this District, under the direction of the Clerk of this Court, cause the permanent Calendar for causes for the October and April Terms of the Court to be printed, and ready for distribution by the Clerk of the Court, four days prior to the commencement of each term respectively.

VII.

R U L E S.

SOUTHERN DISTRICT OF NEW YORK.

DISTRICT COURT.

JUDGE AND OFFICERS
OF THE
DISTRICT COURT OF THE UNITED STATES
FOR THE
SOUTHERN DISTRICT OF NEW YORK.

ADDISON BROWN—District Judge.
No. 233 East Forty-eighth Street, New York City.

ELIHU ROOT—United States Attorney.
No. 52 East Fifty-fifth Street, New York City.

United States Attorney's Office, Room No. 50, in Post-Office Building,
New York City.

SAMUEL H. LYMAN—Clerk District Court.
No. 228 East Forty-second Street, New York City.

SAMUEL M. HITCHCOCK—Deputy Clerk.
The "Benedict" Washington Square, New York City.
Clerk's Office—Room No. 62 Post Office Building, New York City.

JOEL B. ERHARDT—United States Marshal.
New York City.

HENRY R. CURTIS—Deputy Marshal.
138 East Fortieth Street, New York City.

Marshal's Office, Room No. 56 Post-Office Building, New York City.

Court Room—Room No. 40 Post Office Building, New York City.

District Court held in Room No. 40 Post-Office Building, New York City, on the 1st Tuesday in every month.

For FEDERAL STATUTES especially relating to this Court, see —
Respecting the PRACTICE in the DISTRICT COURTS generally, their power to make Rules, etc., pp. 353 to 355.
Respecting FEES, etc., pp. 357 to 372.
Respecting the JURISDICTION of this Court, etc., p. 375.
Respecting SESSIONS, etc., pp. 379 to 386.

RULES
OF THE
DISTRICT COURT OF THE UNITED STATES
FOR THE
SOUTHERN DISTRICT OF NEW YORK
IN PRACTICE
IN
ADMIRALTY, COMMON LAW, INFORMATIONS AND PRIZE CASES, AND
MISCELLANEOUS RULES OTHER THAN IN BANKRUPTCY
PROCEEDINGS.

NOTE.—Wherever under any of the Rules printed hereunder reference is made to “Admiralty Rule,” followed by a number, the Rule of Practice of that number adopted by the Supreme Court of the United States in Admiralty and Maritime Jurisdiction, on the Instance Side of the Court, in pursuance of the act of the 23d of August, 1842, chapter 188, printed at pages 331 to 349, is intended to be referred to; and wherever under any one of the said Rules reference is made to “District Court Rule,” followed by a number, the Rule of the District Court of the United States for the Southern District of New York of that number is intended to be referred to. Rules 1 to 178, inclusive, hereunder, were adopted November 6th, 1838.

Rule 1.

A libel, information, or petition, must state plainly the facts upon which relief is sought, without any repetitions or amplification of charges.

See Admiralty Rules 22 and 23, page 336.

Rule 2.

No process shall issue until the pleading or statement in writing upon which it is allowed be duly filed.

See Admiralty Rule 1, p. 331.

Rule 3.

Libels (except on behalf of the United States) praying an attachment *in personam* or *in rem*, or demanding the answer of any party on oath, shall be verified by oath or affirmation.

See District Court Rule 87, p. 468.

Rule 4.

The oath or affirmation of the party himself, in all cases where one is necessary, shall be required to pleadings filed in his name, except as is hereafter otherwise provided, or as shall be specially ordered by the Judge.

See District Court Rule 93, p. 469.

Rule 5.

Libels, informations, or petitions, praying a monition or citation only, without attachment, need not be sworn to.

Rule 6.

Libels, and other proceedings to be filed, shall be plainly and fairly engrossed, without erasures or interlineations materially defacing them. If papers not conforming to this Rule are offered, the clerk shall require the allocatur of the Judge to be indorsed thereon, before he receives them on the files.

Rule 7.

Amendments, or supplementary matters, must be connected with the libel or other pleading by appropriate references, without a recapitulation or restatement of the pleading amended or added to.

Rule 8.

In suits for seamen's wages, any mariner in the same voyage, not made a party, may, by short petition to the Court, in any stage of the cause previous to the final distribution of the fund

in Court, or discharge of the defendant and his sureties, be joined as libellant in the cause, but no costs shall be allowed for the proceedings taken to make him a party.

Rule 9.

The proctor in the original cause shall not, however, be compelled to proceed in behalf of such petitioning mariner, unless a reasonable indemnity is offered for such costs as may be incurred in consequence of his being joined in the cause.

Rule 10.

In case of salvage and other causes, civil and maritime, persons entitled to participate in the recovery, but not made parties in the original libel, may, upon petition, be admitted to prosecute as co-libellants, on such terms as the Court may deem reasonable.

Rule 11.

Process on libels or informations may be made returnable on any day, at a stated or special term, but writs for the sale of property under any order or decree of the Court, and all final process, shall be returnable at a stated term, unless, upon cause shown, an earlier day is specially appointed by the Judge.

Rule 12.

Tuesday of each week is appointed as a special sessions of the Court (except the stated term be then in session), at which the same proceedings may be taken, in causes of admiralty and maritime jurisdiction, as at a stated term.

Rule 13.

Process to be used in commencing suits shall be a citation or monition; an attachment *in rem*, united with a monition, or, by special allowance of the Judge, with an attachment *in personam*; an attachment *in personam* and a writ of foreign attachment.

See Admiralty Rule 1, p. 331.

Rule 14.

Where no specific process is provided by the rules, parties

may have such process as is in use in like cases in the Supreme Court of the State.

See Admiralty Rule 2, p. 332.

Rule 15.

Where it is not desired to arrest a defendant, the clerk, on filing a libel or information, may, at the instance of the actor, issue a citation or monition, according to the usage in civil and admiralty proceedings.

See Admiralty Rules 2, p. 331, and 7, p. 333, and District Court Rule of 28th February, 1871, p. 509.

Rule 16.

No process *in personam*, for the arrest of any person, in cases of torts or unliquidated damages, shall issue, except upon the mandate of the Judge.

See Admiralty Rule 7, p. 333.

Rule 17.

In cases of liquidated damages, when the certainty and amount of the demand appear upon the face of the libel, an attachment *in personam* may be issued by the clerk without an order. The attachment shall plainly express the cause of action and the amount of the demand, and the clerk shall indorse thereon the sum for which bail is required, not exceeding one hundred dollars above the sum sworn to be due and unpaid; but no attachment or citation shall be issued until the libellant shall have filed a stipulation for costs, in the sum of one hundred dollars, except in suits by the United States.

See District Court Rules 44 and 45, p. 460, and District Court Rule of 16th April, 1847, p. 498, and Admiralty Rule 7, p. 333.

Rule 18.

On the return of a citation or warrant by the marshal "served personally," the party shall be deemed in Court, and may be proceeded against accordingly.

Rule 19.

When the citation or monition, in suits *in personam*, is not served personally, the libellant may, at his election, pursue the

defendant to a decree of contumacy, in which decree may be embraced an order for the attachment of the defendant as for contempt of process; or, on verifying by oath the matters demanded by the libel, the libellant may have an attachment *in personam* instanter, on the return of the citation "not served."

Rule 20.

In the latter case, all subsequent proceedings may be as if the attachment had been sued out in the first instance.

Rule 21.

On warrants to arrest the person, in admiralty and maritime causes, the marshal may take bail in the form of a stipulation, and in the sum indorsed on the warrant, conditioned for the appearance of the party on the return day, to answer to the libellant in a cause civil and maritime, according to the course of the court.

See Admiralty Rules 3, p. 332, and 48, p. 343.

Rule 22.

The sureties having made oath thereon to their sufficiency, and the bail stipulation being filed, it shall have the same effect in favor of the actor, and against the defendant, as if taken in Court; and the marshal shall be deemed discharged of all personal responsibility for the appearance of the respondent.

Rule 23.

In case the marshal does not file such stipulation, or the sureties being required, refuse to justify, like proceedings may be taken to compel the marshal to bring in the party, as if no stipulation had been entered into.

Rule 24.

The condition of the stipulation shall be deemed satisfied, if the party shall appear in person, on the return day of the warrant, and submit himself for commitment, or enter into the usual stipulation in the cause, according to the course of the Court.

Rule 25.

If a party against whom a warrant of arrest issues cannot be found, and return thereof be made, the plaintiff may, upon the mandate of the Judge, have a warrant to attach the property of the defendant, and may also have inserted therein a clause of foreign attachment, according to the course of the admiralty.

Rule 26.

In all cases of attachment, under admiralty process, to compel an appearance, the attachment may be dissolved on the party's giving a stipulation with sureties, to the same effect as in cases of arrest.

See Admiralty Rule 4, p. 332.

Rule 27.

In cases of foreign attachment, if the defendant appear, the same proceedings may be had as is usual in suits *in personam*, and, if he make default, the Court will proceed *ex parte*, and pronounce the proper decree, unless the attachment is discharged at the instance of the garnishee.

Rule 28.

Process cannot issue against goods, choses in action, or moneys in the hands of third persons, except by the order of the Judge, and upon due proof of the claim first made; and the names of such persons, and also of the persons whose effects are to be attached, together with a specification of such effects, shall be expressed in the process.

Rule 29.

On the service of the attachment by arrest of property, the parties holding the property or funds attached shall, on the return day of such process, file an affidavit containing a full and true statement of the property or funds in their hands, belonging to the principal party at the time the attachment was served, and at the time the deposition is made, and declare whether they have any, and, if any, what claim to any, and what part thereof, and shall then, on motion of the actor, pay

into Court such amount as they shall not claim, or as may be ordered by the Court, or give stipulation, with sufficient surety, to abide the further order or decree of the Court in relation thereto; and, on their default in this behalf, a rule may be entered, that an attachment issue against them, unless they shall show cause in four days, or on the first day the Court is in session afterwards.

See Admiralty Rule 37, p. 341.

Rule 30.

When the property, effects or credits named in the process are not delivered up to the marshal by the garnishee or trustee, or are denied by him to be the property of the party, it shall be a sufficient service of such foreign attachment to leave a copy thereof with such trustee, or at his residence or usual place of business, unless the libellant shall, by competent surety, indemnify the marshal for arresting the property pointed out to him.

See Admiralty Rule 37 n. 341.

Rule 31.

On the return, by the marshal, of service of such attachment by notice and copy, with the reason thereof, the libellant may move the Court for a peremptory attachment, or such order as the equity of the case may demand; or, on proof satisfactory to the Court, that the property, &c., belongs to the defendant, may proceed to a hearing and final decree in the cause, as if the property had been held in arrest.

See Admiralty Rule 37, p. 341.

Rule 32.

All process to the marshal shall be returned on the return day thereof, and, if he shall not return the same in four days after being required in writing so to do, by any party or his proctor, upon affidavit of such requirement and of the delivery of the process to him, an order may be entered, of course, that he show cause why an attachment shall not issue against him; and, in the case of process *in rem*, the return of the marshal shall express the day of the seizure of the property or the day of sale, if a process for that object.

Rule 33.

No process shall be received on file unless duly returned by the officer to whom directed.

Rule 34.

In case the Court is not in session at the return of process requiring to be acted on in open court, proceedings shall be deemed continued to the next sitting of the Court (either stated or special), at which time the like proceedings may be had thereupon as if then returnable.

Rule 35.

On proclamation, after due return of process, the libellant shall be entitled to a decree of default or contumacy, according to the nature of the case, and the three proclamations heretofore used are abolished.

See District Court Rules of 1st December, 1847, p. 498; and District Court Rule of 7th February, 1863, p. 505; and Admiralty Rule 29, p. 338.

Rule 36.

In case of the attachment of property, or the arrest of the person, in causes of civil and admiralty jurisdiction (except in suits for seamen's wages, when the attachment is issued upon certificate, pursuant to the Act of Congress of July 20, 1790), the party arrested, or any person having a right to intervene in respect to the thing attached, may, upon evidence showing any improper practices, or a manifest want of equity on the part of the libellant, have a mandate from the Judge, for the libellant to show cause instanter why the arrest or attachment should not be vacated.

Rule 37.

Stipulations may be taken, in admiralty and maritime causes, out of Court, before the Clerk or a commissioner, under a *dedimus potestatem*. The officer taking the stipulation shall, if required by the opposite party, examine the sureties on oath and decide as to their competency. An appeal may be taken instanter to the Judge, in case the decision is against the sufficiency of the sureties.

See Admiralty Rules 5, p. 332, and 35, p. 340.

Rule 38.

The conditions of stipulations, in causes *in personam*, shall be, that the principal, whenever required by this Court, or an appellate Court, in case of appeal, shall appear and answer to the cause or to interrogatories, and pay all costs that may be decreed against him, and, by the respondent or defendant, that he will also perform and abide all orders and decrees in the cause, interlocutory or final, or deliver himself personally for commitment, in execution of such orders, to the proper officer.

See Admiralty Rule 3, p. 332.

Rule 39.

The amount of stipulations on the part of the defendants, in causes *in personam*, shall be the sum indorsed on the warrant, and, *in rem*, on the delivery of property attached, the appraised or agreed value of the property seized, unless the sum, in either case, is modified or enlarged by order of the Court.

Rule 40.

Application may be made instanter to the Judge, after an arrest *in personam*, to mitigate the amount of the bail stipulation; and like application may be made at any time after property has been delivered on bail stipulation, upon facts occurring after such delivery, to discharge such stipulation, or to reduce the amount, according to the equity of the case, previous notice of the application having been given the proctor of, the libellant.

See Admiralty Rule 6, p. 332.

Rule 41.

Two days' notice shall be given the proctor of the libellant, of application for delivering up on stipulation property under attachment, specifying the sureties intended to be given, and their occupations and places of residence, and the officer before whom, and the place where, the stipulation will be offered, except in suits by seamen for wages, when such notice may be instanter.

See District Court Rule of 1st October, 1857, p. 502.

Rule 42.

The stipulation or bond to be given upon releasing and delivering up property arrested by process of the Court, shall be conditioned that the claimant and his sureties shall, at any time, upon the interlocutory order or decree of the Court, or of any appellate Court to which the cause may proceed, and on notice of such order to the proctor of the party to whom the property shall have been delivered, bring into Court the appraised or agreed value of such property, or any part thereof so ordered or decreed. If no proctor is employed by such party, the order or decree shall be deemed peremptory two days after the same is entered.

See Admiralty Rules 10, p. 333, and 11, p. 334.

Rule 43.

The clerk shall provide a book in which shall be registered all stipulations filed in causes civil and admiralty, which shall be open to the examination of all parties interested.

Rule 44.

. No process *in rem* shall be issued, nor shall any appearance or answer be received, or third party be permitted to intervene and claim, except on the part of the United States, unless a stipulation, in the sum of two hundred and fifty dollars, shall be first entered into by the party, and at least one surety, resident in the District, conditioned that the principal shall pay all costs awarded against him by this Court, or, in case of appeal, by the appellate Court.

See District Court Rule 17, p. 454; and District Court Rules of 16th April, 1847, p. 498; and of 26th April, 1865, p. 505; and Admiralty Rule 26, p. 337. See especially District Court Rule of 15th March, 1883, p. 513, amending this Rule by an addition at the end.

Rule 45.

But seamen suing *in rem* for wages in their own right and for their own benefit, for services on board American vessels, and salvors coming into port in possession of the property libelled, shall not be required to give such security in the first instance. The Court, on motion, with notice to the libellants,

may, after the arrest of the property, for adequate cause, order the usual stipulation to be given in these cases, or that the property arrested be discharged.

See District Court Rules of 16th April, 1847, p. 498, and Rule 17, p. 454.

Rule 46.

Notice of the arrest of property by attachment *in rem*, in behalf of individual suitors, shall be published and affixed in the manner directed by Act of Congress in the case of seizures on the part of the United States, except when the Judge by special order directs a shorter notice than fourteen days; and except that, instead of the substance of the libel, a short statement of its purport may be given.

Rule 47.

Notice of sale of property after condemnation, in suits *in rem* (except under the revenue laws and on seizure by the United States), shall be six days, unless otherwise specially directed in the decree of condemnation and sale.

Rule 48.

All such notices shall be published in the manner directed by Act of Congress, in the case of condemnation under the revenue laws.

Rule 49.

The marshal shall be allowed (in conformity to the former usage of the Court) one dollar and fifty cents per day for the custody of a vessel, her tackle, apparel and furniture, seized by any officer of the revenue, and seized, libelled and prosecuted for forfeiture.

Rule 50.

He shall be allowed for the custody of the goods so seized, on all sums not exceeding \$5,000, held in custody less than thirty days, two *per cent.*; on all sums exceeding \$5,000, held in custody less than thirty days, one *per cent.*; on all sums not exceeding \$5,000, held in custody over thirty days, two and a half *per cent.*; and on all sums exceeding \$5,000, held in custody over thirty days, one and a half *per cent.*; except, on at-

tachment of specie, bullion, jewelry or precious stones, the allowance to the marshal shall be specifically fixed by the Court, having regard to the special circumstances of each case.

Rule 51.

The marshal may have like allowances taxed on all other attachments of property, in causes of civil and admiralty jurisdiction.

Rule 52.

All the above allowances are, however, subject to alteration by the Court on motion, due notice thereof being given the opposite party, and adequate cause being shown therefor.

Rule 53.

The allowance to the marshal, above appointed, for the custody of goods, shall be computed upon the gross proceeds, in case of sale; or upon the appraised or agreed value, if bonded; but the marshal, in case of an agreed valuation between the parties, not assented to by him, may have an appraisement in the usual mode.

Rule 54.

If attachments *in rem* are accompanied by written instructions to the marshal, specifying the sum demanded (adding thereto \$250, to cover costs), he shall, as in case of executions, only arrest so much of the goods or effects to be seized (when severable) as shall be sufficient to satisfy such amounts.

Rule 55.

In all cases of stipulations, in civil and admiralty causes, any party having an interest in the subject-matter, may move the Court, on special cause shown, for greater or better security, giving the opposite party two days' notice thereof, unless a shorter time is allowed by order of the Judge.

See Admiralty Rule 6, p. 332.

Rule 56.

After a citation or monition, or warrant of arrest, in suits *in personam*, returned "served personally," if the defendant do

not appear at the return day, he shall be deemed in contumacy and in default, and the libellant may take order for enforcement of the stipulation (in case any is given), or to compel the defendant's appearance, according to the course of admiralty proceedings ; or, at his option, may proceed to hearing *ex parte* and obtain the proper decree, unless the Court, for good cause, shall allow the defendant further time.

Rule 57.

In suits *in personam*, stipulators to the marshal on the arrest of the defendant may be discharged from their stipulation, on the surrender of the principal, as in cases of bail at law.

Rule 58.

So, also, stipulators or *fide-jussores*, after the return of the attachment, in suits *in personam*, may surrender their principal, or he may surrender himself, in discharge of the stipulation, as in cases of special bail at law ; except in respect to costs in this Court, or any other Court to which the cause may be appealed.

Rule 59.

All stipulations in causes civil and maritime shall be executed by the principal party (if within the District), and at least one surety resident therein, and shall contain the consent of the stipulators, that, in case of default or contumacy on the part of the principal or sureties, execution to the amount named in such stipulation may issue against the goods, chattels and lands of the stipulators. The Court will modify the execution as to the time it may stay and the amount to be collected, according to the equity of the case. Non-resident parties must supply at least two sureties.

See District Court Rule of 26th April, 1865, p. 505.

Rule 60.

In case of seizure of property in behalf of the United States, an appraisement for the purpose of bonding the same may be had by any party in interest, on giving one day's previous notice of motion before the Court, or the Judge in vacation, for the appointment of appraisers.

Rule 61.

If the parties or their proctors and the District Attorney are present in Court, such motion may be made *instanter*, after seizure, and without previous notice.

Rule 62.

Orders for the appraisement of property under arrest at the suit of an individual, may be entered, of course, by the clerk, at the instance of any party interested therein, or upon filing the consent of the proctors for the respective parties.

Rule 63.

Only one appraiser is to be appointed in suits by individuals, unless otherwise specially ordered by the Judge, and, if the respective parties do not agree in writing upon the appraiser to be appointed, the clerk shall forthwith name him, either party having a right of appeal *instanter* to the Judge from such nomination, for adequate cause.

Rule 64.

In case vessels, their tackle, or appurtenances, are to be appraised, the clerk shall name a warden of the port, and, in case of merchandise, an appraiser or an assistant appraiser of the Custom-house, as appraiser.

Rule 65.

In suits *in rem* for seamen's wages, and in all other actions *in rem* for sums certain, the claimant or respondent may pay into Court the amount sworn to be due in the libel, with interest computed thereon from the time it was due, to the stated term next succeeding the return day of the attachment, and the costs of the officers of Court already accrued, together with the sum of \$250 to cover further costs, etc.; or, at his option, may give stipulation to pay such sworn amount, with interest, costs and damages (first paying into Court the costs of the officers of Court already accrued), and, in either case, may thereupon have an order entered *instanter* for delivery of the property arrested, without having the same appraised.

Rule 66.

Appraisers, before executing their trust, shall be sworn or affirmed to its faithful discharge, before the clerk or his deputy (who are hereby appointed commissioners for the qualification of appraisers), and shall give one day's previous notice of the time and place of making the appraisement, by affixing the same in a conspicuous place adjacent to the United States Court Rooms, and where the marshal usually affixes his notices, to the end that all persons concerned may be informed thereof, and the appraisement, when made, shall be returned to the clerk's office.

Rule 67.

Appraisers acting under an order of this Court shall be severally entitled to three dollars for each day necessarily employed in making the appraisement, to be paid by the party at whose instance the same shall be ordered.

Rule 68.

No vessels, goods, wares, or merchandise in the custody of the marshal shall be released from detention, upon appraisement and surety, until the costs and charges of the officers of this Court, so far as the same shall have accrued, shall first be paid into Court by the party at whose instance the appraisement shall take place, to abide the decision of the Court in respect to such costs.

See Admiralty Rules 10, p. 333, and 11, p. 334.

Rule 69.

No property in the custody of any officer of the Court shall be delivered up without the order of the Court; but such order may be entered, of course, by the clerk, on filing a written consent thereto by the proctor in whose behalf it is detained; and, also, after appraisement and bond duly executed.

Rule 70.

If, in possessory suits, after decrees for either party, the other shall make application to the Court for a proceeding in a petitory suit, and file the proper stipulation, the property shall not be delivered over to the prevailing party until after

an appraisement made, nor until he shall give a stipulation with sureties to restore the same property without waste, in case his adversary shall prevail in the petitory suit, and also to abide as well all interlocutory orders and decrees, as the final sentence and decree of the District Court, and, on appeal, of the appellate Court.

Rule 71.

In all cases where a judgment or decree is entered on a bond or stipulation filed with the clerk for the appraised or agreed value of any property libelled in this Court, the clerk shall receive, in addition to the amount of the bond, interest at the rate of six *per cent. per annum*, for the time which shall intervene between the entry of the judgment, or date of the stipulation, and the day when the money shall be paid into Court.

Rule 72.

A tender *inter partes* shall be of no avail on defence, or in discharge of costs, unless, on suit brought, and before answer, plea, or claim filed, the same tender is deposited in Court, to abide the order or decree to be made in the matter.

Rule 73.

When tender is first made after suit brought, it must include taxable costs then accrued.

Rule 74.

No third party can intervene by claim, without proof of a subsisting interest in the subject-matter of the claim. This proof may, in the first instance, be the oath of the claimant, but subject to denial and disproof on the part of the libellant, on issue thereto or on summary petition.

See Admiralty Rules 26, p. 337, and 34, p. 340.

Rule 75.

Double pleas, or exceptions, replications to pleas, triplications or rejoinders, &c., may be filed without previous leave of the Court, the pleading of several matters being restricted to cases in which the matters are distinct.

Rule 76.

Defence may be made by answer or claim, of matters of law or fact, without the employment of exceptions or special pleas usual in causes of civil and maritime jurisdiction, other than exceptions to the competency of the party or the process, or other matter of abatement.

Rule 77.

If matter of bar at law to the libel is set up by answer or claim, and allowed by the Court, no costs shall be taxed for any other part of the answer or claim than that stating such bar.

Rule 78.

When the answer alleges a bar in law to the whole libel, it may be treated as a plea, and set down for hearing, without filing a replication other than to such bar, or going into proofs upon the issues in fact.

Rule 79.

Where a party not required to answer intervenes by claim and answer, costs will be taxed for the claims only.

Rule 80.

When an answer is required, in a suit *in rem*, of a party having no interest in the subject-matter, he may file an exceptive allegation or disclaimer, and notice the same instant for hearing. If the decree of the Court is in affirmance of his plea, he shall be discharged the action with costs.

Rule 81.

One improperly joined as defendant, in an action *in personam*, may have a decree of discharge in the same manner; provided it is made satisfactorily to appear to the Court that he can give material testimony as a witness in the cause.

Rule 82.

When the claim is in derogation of the right set up by the libel, it may form a general issue therewith, by denying "that

the libellant is entitled to the remedy and relief in the premises sought by him," without traversing or admitting the several articles of the libel.

See Admiralty Rule 26, p. 337.

Rule 83.

A general issue may be taken by answer, in like manner, when the answer is not required to be under oath.

See Admiralty Rule 27, p. 338.

Rule 84.

So, also, the libel may be contested affirmatively, by a general issue instead of a formal demurrer.

Rule 85.

When a general issue is taken to the libel, in open Court, on the return day of process, either party may have the cause placed upon the calendar instanter, and it may be called in its place for proofs, without other notice.

Rule 86.

Each party is entitled to like proceedings in such case as if the cause had been noticed by each pursuant to the usual practice.

Rule 87.

A sworn answer is not to be deemed higher evidence than the libel or information to which it responds, unless made so by the act of the promovent. An answer need not be put in under oath, unless so required by a sworn libel, or one filed by the United States.

See District Court Rule 3, p. 452, and Admiralty Rules 27, p. 338, and 49, p. 343.

Rule 88.

The matter set up by a sworn answer responsive to the allegations or interrogatories of the libel, shall be deemed admitted on the part of the libellant, unless, within four days from the time the answer is perfected, or from the expiration of the time allowed for excepting thereto, replication is filed, or a written notice served on the proctor of the respondent, that, on the

trial of the cause, proof will be offered on the part of the libellant, in opposition to the allegations of the answer. No replication need be filed for any other purpose, to an answer taking an issue in fact upon the allegation of the libel.

See Admiralty Rule 52, p. 345, affecting the subject matter of this Rule.

Rule 89.

A claim or answer may be put in and filed at any time after the service of process and before defaults entered; and, when it shall be put in at any other time than on making proclamation, notice of the time of filing it shall be given the libellant; otherwise, he shall not be bound to regard it.

Rule 90.

If separate answers or claims are put in by the same proctor, or by different proctors being connected in business, all costs thereby unnecessarily incurred shall be disallowed, on taxation.

Rule 91.

An answer or claim on the part of the United States is to be put in without oath, by the District Attorney, and is not subject to exception for insufficiency.

Rule 92.

In the case of bailable process *in personam*, unless the defendant appear and put in bail stipulation according to the rules of the Court, his claim or answer may be treated as a nullity and his defaults be entered. An answer in such case shall be deemed filed from the time bail becomes perfected.

Rule 93.

On due proof that a claimant or respondent is absent from the United States, or resides out of the district, and more than one hundred miles from the city of New York, a claim or answer to a libel may be sworn to by a proctor or attorney in fact, in behalf of such party; and if, thereupon, the libellant, by written notice to the respondent, demands a personal answer verified by the oath of the party, proceedings shall stay a reasonable time to enable such answer to be taken by

commission or *dedimus potestatem*. The provisions of this rule may, also, be applied to the verification of a libel, by the oath of a proctor or attorney in fact.

See District Court Rule 4, p. 452; and Admiralty Rule 26, p. 337.

Rule 94.

The defendant may, on the return day of process, and before answering, demurring or pleading, file an exception to the libel, that it is multifarious or ambiguous, or without plain allegations upon which issue can be taken; and, if it be adjudged by the Court insufficient, for any of these causes, and be not amended by the libellant within two days thereafter, it shall be dismissed, with costs. •

See Admiralty Rule 36, p. 340.

Rule 95.

Proceedings upon such exceptions shall conform to those on exceptions to answers or other pleadings.

See Admiralty Rule 36, p. 340.

Rule 96.

The libellant may, within four days from the filing of the answer or claim, file exceptions thereto, for insufficiency, irrelevancy or scandal, which exceptions shall briefly and clearly specify the parts excepted to, by the line and page of the papers in the clerk's office; whereupon, the party answering or claiming shall, in four days, either give notice to the libellant of his submitting to the exceptions, or set down the exceptions for hearing, and give four days' notice thereof, for the earliest day of jurisdiction afterward. In default whereof, the like order may be entered as if the exceptions had been allowed by the Court.

See Admiralty Rules 28, p. 338, and 36, p. 340.

Rule 97.

If a party submit to exceptions for insufficiency, he shall answer further, within four days after notice of his submitting. If the exceptions are allowed on hearing, he shall answer further within such time as the Court shall direct; and, if the

hearing of the exceptions shall not be duly brought on, or the further answer duly put in, the claim or answer excepted to shall be treated as a nullity, and the default of the party be entered.

See Admiralty Rules 28, p. 338, 30, p. 339, and 36, p. 340.

Rule 98.

If exceptions for irrelevancy be submitted to, or be allowed by the Court, or the hearing be not duly brought on by the respondent, the matter excepted to shall be struck out of the claim or answer by the clerk.

See Admiralty Rule 36, p. 340.

Rule 99.

Either party may propound interrogatories to the other, within four days from the putting in of the claim, or answer, or other pleading, and the perfecting of the same, if excepted to.

See Admiralty Rules 32, p. 339, and 33, p. 340.

Rule 100.

A copy of the interrogatories shall be served on the party for whom the same are intended, or his proctor, if one be employed; and, if he object thereto, he shall notify the party serving the same, who shall, on due notice, submit the same to the Judge for his allowance. The interrogatories allowed shall be filed with the clerk, and notice thereof be given, and the party shall file his answer thereto in ten days after such notice; in default whereof, if libellant, the libel shall be dismissed; if claimant or defendant, the claim or answer shall be treated as a nullity, and default may be entered against such party.

See Admiralty Rules 32, p. 339, and 33, p. 340.

Rule 101.

Answers to interrogatories may be excepted to in the same manner as answers or claims put in by a defendant, and shall, in all respects, be subject to the provisions of the rules in relation to exceptions: and, if the libellant making answers shall not perfect the same after exception, the libel shall be dismissed for want of prosecution. But this rule and the pre-

ceding one shall not in any case be deemed to require answers to interrogatories on the part of the United States, in suits brought in their behalf.

See Admiralty Rules 32, p. 339, and 33, p. 340.

Rule 102.

The oath of calumny shall not be required of any party, in any stage of a cause.

Rule 103.

Suits may be joined or consolidated upon the same principle as in the practice of the Court at common law.

Rule 104.

When various actions are pending, all resting upon the same matter of right or defence, the Court, by order, at its discretion, will compel the parties to abide by the decision rendered in one case, and will enter a decree in the other causes conformably thereto, although there be no common interest between the parties.

Rule 105.

Commissions for taking testimony, if not sued out pursuant to the rules of the Circuit Court, shall be moved for in four days after the claim or answer is filed and perfected (if the same shall have been excepted to); but, if interrogatories shall be propounded for the other party, by the party who moves for a commission, he shall have four days for moving after the answers to the interrogatories shall be perfected; otherwise, such commissions shall not operate to stay proceedings; but, on a proper case shown, application for a commission may be made at any time after the action is commenced, and before issue joined, or after a default or interlocutory decree.

See Rules of the Circuit Court of the United States for the Southern District of New York, Nos. 41 to 50 inclusive, pp. 403 to 405.

Rule 106.

Affidavits on which a motion for a commission is made shall specify the facts expected to be proved, and the shortest time

within which the party believes the testimony may be taken and the commission returned.

Rule 107.

A commission will not be allowed to stay proceedings if the opposite party admits in writing that the witnesses will depose to the facts stated in such affidavit; such affidavit, with the admission, may be read on the trial or hearing, and will have the same effect as a deposition to those facts by the witness or witnesses named.

Rule 108.

The motion may be noticed and made at term, before the Court, or in vacation before the Judge out of Court, and only one commissioner shall be named, unless special cause is shown for appointing a great number, nor will costs be taxed for the services of more than one, except where both parties require a greater number.

Rule 109.

Interrogatories for the direct and cross-examination, in case the parties disagree respecting them, shall be presented to the Judge for his allowance at one time, and one day's notice of such reference shall be given by the party objecting to the opposite interrogatories.

Rule 110.

Cross-interrogatories shall be served within four days after the direct have been received, or they shall be regarded as assented to, and, if no notice of reference to the Judge is given within five days after both direct and cross-interrogatories have been served, each party shall be deemed to have assented to the interrogatories served.

Rule 111.

The interrogatories, direct and cross, as agreed to by the parties, or settled by the Judge, shall be annexed to the commission.

Rule 112.

Directions as to the execution and return of the commission, signed by the clerk and the proctor of the party moving

it, or of both parties, if both unite in the commission or if both propose interrogatories, shall accompany the commission.

Rule 113.

Depositions taken under commissions, or otherwise, shall be forwarded to the clerk immediately after they are taken, and be filed on their return to the clerk's office, in term or vacation, and notice thereof shall be forthwith given by the party filing them to the proctor of the opposite party. And all objections to the form or manner in which they were taken or returned shall be deemed waived, unless such objection shall be specified in writing in four days after the same are opened, unless further time shall be granted by the Judge.

Rule 114.

In suits between individuals, either party may at any time after the commissions or depositions are deposited with the clerk, enter an order of course, as of a special sessions, if in vacation, to open the same and deliver copies thereof.

Rule 115.

In suits on seizures, in which the United States are a party, such order may be entered on the written consent of the proctors or attorneys of the respective parties, or on motion to the Court at a stated or special session.

Rule 116.

Opening such commissions or depositions shall not preclude either party from objecting to the competency or relevancy of the evidence when offered on trial.

Rule 117.

Exceptive allegations to the credibility or competency of witnesses examined on deposition or commission, may be filed within four days after the depositions or commissions are opened at the clerk's office, and notice shall be given forthwith of such exceptions.

Rule 118.

Testimony impeaching or supporting the witnesses may, in

such case, be given by the parties respectively, on the hearing of the cause, and may be taken in the same manner as proofs in chief.

Rule 119.

Depositions *in perpetuam rei memoriam*, to be used in this Court, may be taken under a *dedimus potestatem*, or by any officer authorized by Act of Congress to take depositions *de bene esse*, to be used in the Courts of the United States, in like cases and by like proceedings as are now authorized by the Supreme Court of the State of New York.

Rule 120.

Notices of trial, argument or hearing, may be for any day in term, the Court being then sitting (including days to which the Court may stand adjourned), upon a sufficient excuse for not giving notice for the first day of the term.

Rule 121.

In all issues brought to trial, argument or hearing, except as provided in these Rules, four days' previous notice shall be served on the attorney or proctor of the opposite party, when the attorney or proctor resides in this city; in all other cases, posting such notice conspicuously in the clerk's office shall be a sufficient service.

Rule 122.

A note of the pleadings and of the date of the issue shall be served on the clerk, with a notice of the hearing, four days before the time of hearing, and such notices shall also specify the pleadings, and whatever papers or documents in his office shall be required by the parties to be produced by the clerk at the trial.

Rule 123.

So soon as issue is joined, the respondent or claimant may notice the cause for hearing on his part, and be thereupon entitled to a decree dismissing the same, with costs, or such other decree as the case may demand, unless the libellant shall also notice the cause for the same time, and proceed to trial or

hearing, or obtain a continuance by order of the Court, on proper cause shown.

See District Court Rule 183, p. 487, and Admiralty Rule 39, p. 341.

Rule 124.

When either party shall require *viva voce* testimony given in open Court, to be taken down by the clerk pursuant to the Act of Congress, it shall be taken in the same manner as in jury trials on common law issues, and not *verbatim*, as in depositions *de bene esse*.

See District Court Rule of 17th November, 1868, p. 508, and Admiralty Rule 51, p. 344.

Rule 125.

The notes of the Judge may, by assent of parties, be used as if taken down by the clerk.

See District Court Rule of 17th November, 1868, p. 508.

Rule 126.

Each party desiring to diminish, vary, or enlarge the minutes of proofs taken by the clerk or Judge, may, within two days after the trial, serve a statement of proofs on the proctor of the opposite party, and such statement, if assented to, or, if no amendments are proposed thereto, within two days thereafter, by such proctor, shall be regarded the true minutes of the testimony given, and the notes of the Judge or clerk be corrected in conformity thereto.

See District Court Rule of 17th November, 1868, p. 508.

Rule 127.

If amendments are proposed and the parties do not agree therein, the statements and amendments shall be forthwith referred to the Judge, and he shall settle or determine how the facts are, and the statement thus settled or adjusted shall be filed as the true minutes of the testimony given.

See District Court Rule of 17th November, 1868, p. 508.

Rule 128.

In cases of demands arising not *ex delicto*, on a decree in favor of the libellant by default or on hearing, it shall be re-

ferred to the clerk to compute and ascertain the amount due the libellant, but reference may also be made in cases of tort, or on allegations of incidental or consequential damages, if desired by either party.

Rule 129.

In case of the absence of the clerk, or his incompetency, from interest or otherwise, or upon any sufficient cause shown, such reference may be made to assessors, or otherwise, according to the course and custom of Courts of civil and admiralty jurisdiction.

Rule 130.

On such reference, either party may produce and use the pleadings and proofs filed in the cause or heard in Court, and other competent proofs pertinent to the matter of reference.

Rule 131.

The clerk shall allow neither party longer than ten days from the order of reference to complete the proofs thereon, without the special order of the Judge.

Rule 132.

At the instance of either party, the clerk shall report the additional testimony received by him and the offer of testimony rejected (if any) by him.

Rule 133.

Either party may except to the clerk's report and set down the exceptions for hearing, on two days' notice, at the first stated or special sessions after the report is filed.

See District Court Rules of 1st December, 1847, p. 498, and of 11th May, 1868, p. 508.

Rule 134.

Upon the coming in of the report, a decree of confirmation may be entered, on motion, without notice, unless otherwise ordered by the Court, or the report shall be excepted to; and, in the latter case, the exception shall be overruled or held abandoned, unless brought to a hearing the first stated or special sessions of the Court for which it can be noticed.

See District Court Rule of 1st December, 1847, p. 498.

Rule 135.

If the libellant takes no proceedings upon the report within four days after the filing thereof in open Court, the respondent may move the Court to dismiss the libel, for want of due prosecution.

See District Court Rule of 1st December, 1847, p. 498.

Rule 136.

If the promovent in a libel or information neglects to proceed in the cause with the dispatch the course of the Court admits, the respondent or claimant may have the libel or information dismissed on motion, unless the delay is by order of the Judge or the act of the respondent or claimant.

See District Court Rule 123, p. 475, and Admiralty Rule 39, p. 341.

Rule 137.

Four days' notice shall be given of the application to dismiss the action, and a copy of an affidavit, or a certificate of the clerk, that no proceedings have been taken, be served at the same time.

Rule 138.

A special session of the Court (besides the sittings on Tuesday each week) may be opened at any time *instantly*, on the allowance of the Judge, for hearing and disposing of special motions, arguments on questions of law, and also for taking proofs, or hearing admiralty and maritime or revenue causes, and rendering interlocutory or final decrees therein.

Rule 139.

No party shall be compelled to take or meet proceedings at a special sessions (without the order of the Judge previously served on him), in other than civil causes of admiralty and maritime jurisdiction.

Rule 140.

A guardian *ad litem* will be appointed, on a petition, verified by oath, stating a proper case for such appointment; and the guardian shall give stipulations for costs, &c., the same as if he was personally the party in interest.

Rule 141.

Infants may sue by *prochein ami*, to be first approved by the Court; the *prochein ami* to give stipulations and be responsible for costs, in the same manner as the infant would be if of full age.

Rule 142.

Suits can only be prosecuted or defended in *forma pauperis* by express allowance of the Court. In such case, the pauper will be discharged of all stipulations or liabilities for costs.

Rule 143.

But the Court, on satisfactory proof of the inability of a party to comply with the usual stipulations in a cause, may mitigate and modify such stipulations conformably to the equities or exigencies of the case.

See Admiralty Rule 6, p. 332.

Rule 144.

Where proceedings on a decree shall not be stayed by an appeal, and the decree shall not be fulfilled or satisfied in ten days after notice to the proctor of the party against whom it shall be rendered, it shall be of course to enter an order that the sureties of such party cause the engagement of their stipulation to be performed, or show cause in four days, or on the first day of jurisdiction afterwards, why execution should not issue against them, their lands, goods, and chattels, according to their stipulation; and, if no cause be then shown, due service having been made on the proctor of the party, a summary decree shall be rendered against them on their stipulations, and execution issue; but the same may be discharged on the performance of the decree and payment of all costs.

See Admiralty Rule 3, p. 332.

Rule 145.

A party obtaining a decree of the Court, may, at his election, have, for the execution thereof, like process as is now used in this State for like purposes, except that of personal attachment, as for a contempt of Court.

See Admiralty Rule 21, p. 336.

Rule 146.

The writ of *feri facias* or *venditioni exponas* is adopted as final process, in this Court, in all cases for the sale of property ; and the proceedings thereon, in admiralty cases, shall be conformable to those on the common law side of the Court.

See Admiralty Rule 21, p. 336.

Rule 147.

Whenever, from the death of any of the parties, or changes of interest in the suit, defect in the pleadings or proceedings, or otherwise, new parties to the suit are necessary, the persons required to be made parties may be made such either by a petition on their part or by the adverse party.

Rule 148.

In either mode, it shall be sufficient to allege briefly the prayer of the original libel, the several proceedings in the cause and date thereof, and to pray that such persons required to be made parties in the suit may be made such parties.

Rule 149.

On service of a copy of such petition and of notice of the presenting thereof, such order shall be made for the further proceeding in the cause as shall be proper for its speedy and convenient prosecution as to such new parties, and the same stipulations and security shall, in all such cases, be required and given, as in cases of persons becoming originally parties to a suit.

Rule 150.

A party shall not be held to enter his appeal from any decree or order of the Court as final, unless the same is in a condition to be executed against him without further proceedings therein in Court.

See Admiralty Rule 45, p. 343, and Rule of the Circuit Court of the United States for the Southern District of New York, No. 117, p. 419.

Rule 151.

Ten days from the time of rendering the decree shall be

allowed to enter an appeal, within which time the decree shall not be executed. A brief notice in writing to the clerk and opposite proctor, that the party appeals in the cause, shall be a sufficient entry of the appeal, without any petition to the Court for leave to enter the same.

See Admiralty Rule 45, p. 343.

Rule 152.

When an appeal shall be entered, the appellant shall, within ten days thereafter, give security for damages and costs; and, if security shall not be given within that time, the decree may be executed as if there had been no appeal, unless further time be allowed by the Court.

Rule 153.

The appellant shall give four days' notice to the adverse party, or his proctor, of the person or persons proposed as his sureties, with their additions and descriptions, and of the time and place of giving the stipulation.

Rule 154.

When an appeal shall be entered, the appellant shall cause the proceedings of the Court, required by law to be transmitted to the Circuit Court, to be transcribed for that purpose within thirty days after the appeal shall be entered in this Court; and, in default thereof, the decree shall be executed as if there had been no appeal, unless the Court shall, upon special motion of the appellant, otherwise order.

See Admiralty Rule 53, p. 346.

Rule 155.

A rehearing will not be granted in any matter in which a decree has been rendered, unless application is made at the term when the decree is pronounced, or there is a stay of proceedings by order of the Judge.

See Admiralty Rule 40, p. 341.

Rule 156.

No libel of review will be entertained in cases subject to

appeal, nor unless filed before the enrollment of the decree or return of final process issued in the cause.

Rule 157.

When any moneys shall come to the hands of the marshal under or by virtue of any order or process of the Court, he shall forthwith pay over the gross amount thereof to the clerk, with a bill of his charges thereon, and a statement of the time of the receipt of the moneys by him, and, upon the filing of such statements, and the taxation of such charges, the same shall be paid to the marshal out of such moneys; and the general account of all property, sold under the order or decree of this Court, shall be returned by the marshal and filed in the clerk's office, with the execution or other process under which the sale was made.

See Admiralty Rule 41, p. 342.

Rule 158.

All bills of costs and of charges to be paid under any order or decree of this Court, shall be taxed and filed with the clerk before payment thereof; and, if the same shall include charges for disbursements other than to the officers of the Court, the proper and genuine vouchers, or an affidavit therefor (in case of loss of vouchers), shall be exhibited and filed, and, if such bill shall be taxed without four days' notice to all parties concerned, they shall be subject to a retaxation, of course, on application by any such party, not having had notice, and at the charge of the party obtaining such taxation.

Rule 159.

The clerk is authorized to tax or certify bill of costs, and to sign judgments, and also take acknowledgments of the satisfaction of judgments, and all affidavits and oaths out of Court, as in open Court, in all cases where the same are not required by law to be taken in open Court.

Rule 160.

The deputies or chief clerks of the clerk of this Court, not exceeding two in number, and named and designated by an

appointment filed in the office of said clerk, are each authorized to sign judgments, to tax and certify all bills of costs in this Court, other than those of the clerk, and also to affix the seal of the Court and certify proceedings or papers in the name of the clerk, in all other cases than exemplifications of the records or files of the Court, and to perform all duties appertaining to the clerk by the appointment of the Court, or the course of practice, which are not specifically appointed by statute to be performed by the clerk.

As amended by District Court Rule of 26th of March, 1841, not printed among these Rules.

Rule 161.

The clerk is authorized to enter satisfaction of record of any judgment rendered in this Court in behalf of the United States, on filing acknowledgment of satisfaction of the same duly made by the District Attorney.

Rule 162.

All rules to which a party is entitled of course, or which are moved for upon the written consent of the parties, may be entered by the clerk in vacation, without the mandate of the Judge, and be entitled as of a special Court held on that day.

Rule 163.

Proctors of any Circuit or District Court of the United States, and attorneys of the Supreme Court of this State, and solicitors of the Court of Chancery, may be admitted attorneys and proctors of this Court, and counsellors of the said Supreme Court and Court of Chancery, and counsellors and advocates of said Circuit or District Courts may be admitted counsellors and advocates of this Court, of course, upon taking the oaths prescribed by the Constitution and laws of the United States.

Rule 164.

In admiralty and maritime causes, wherein the matter in demand does not exceed fifty dollars, the proceedings for recovery thereof may be summary.

See District Court Rules, June Term, 1849, p. 499.

Rule 165.

Instead of filing a libel, the promovent, in suits by individuals, may, by short petition, state the matter of his demand, and the amount or value thereof, or present an account stated, or a bill of charges by items, on filing either of which, process may issue, as on the filing of a libel in ordinary cases.

See District Court Rules, June Term, 1849, p. 499.

Rule 166.

The same petition or statement used on application for a summons pursuant to the Act of Congress of July 20, 1799, sect. 6, shall, when admiralty process is ordered by the Judge or justice of the peace, be filed, and may stand and be proceeded upon in lieu of the libel in form.

See District Court Rules, June Term, 1849, p. 499.

Rule 167.

Any party intervening may contest the petition or demand orally or in writing, by general denial or affirmance, or file a plea in bar, or answer, or claim.

See District Court Rules, June Term, 1849, p. 499.

Rule 168.

No costs shall be taxed the defendant for any plea, answer, or claim, other than a general issue to the actor's demand, unless an answer on oath be demanded.

See District Court Rules, June Term, 1849, p. 499.

Rule 169.

Either party may file interrogatories to be propounded to his adversary, which shall be answered on oath.

See District Court Rules, June Term, 1849, p. 499.

Rule 170.

The monition, or citation, or attachment, may be made returnable the first day of a stated or special session of Court next succeeding the service thereof, at least three days intervening between the service and return of process *in rem*, in suits by individuals, and fourteen in suits by the United

States; and, on the return of process, in open Court, duly served, the cause may be put *instanter* upon the calendar, and either party, without other notice, may proceed therein to proofs and hearing; and the party obtaining a continuance of the cause, if *in rem*, shall bear all expenses taxed for keeping the thing attached, intermediate such continuance and the final hearing.

See District Court Rules, June Term, 1849, p. 499; and Admiralty Rule 9, p. 333.

Rule 171.

The notices to be published, in suits by individuals, need contain only the title of the suit, the cause of action, the amount demanded, and the day and place of the return of the monition, and be subscribed with the name of the marshal and proctor of the libellant. No more than the usual printer's charge for advertisements of like size shall be taxed for the publication.

See District Court Rules, June Term, 1849, p. 499; and Admiralty Rule 9, p. 333.

Rule 172.

In summary proceedings *in rem*, in behalf of the United States, when the goods are under seizure by the Collector and in his possession, the clerk, at the instance of the District Attorney, may omit the attachment clause in the monition issued.

See District Court Rules, June Term, 1849, p. 499.

Rule 173.

If the monition also contains an attachment in such cases, and the marshal returns that the goods, &c., are in the custody of the Collector, he shall stand acquitted of all responsibility for their safe keeping or production to answer the decree.

See District Court Rules, June Term, 1849, p. 499.

Rule 174.

In such case, the service of the monition shall be by leaving a copy, or notice thereof, with the Collector or person having the goods in keeping, and also making like service on the owner, or his agent, if known to the marshal, and resident in the city.

See District Court Rules, June Term, 1849, p. 499.

Rule 175.

The costs to be taxed the District Attorney, proctor and advocate, on either side, in a summary cause, shall not exceed twelve dollars.

See District Court Rules, June Term, 1849, p. 499.

Rule 176.

Fees shall not be taxed for more than one witness to prove the same facts, unless it appears that the witness was impeached or his testimony contradicted. No charges for serving writs of subpoena shall be taxed against the opposite party, when the writ is executed by the marshal. If a witness does not attend after regular summons, proceedings to attachment may be had against him, without the service of a writ of subpoena.

See District Court Rules, June Term, 1849, p. 499.

Rule 177.

The provisions of the twelve preceding rules are limited to those cases of admiralty and maritime jurisdiction, in which no appeal lies from this Court to the Circuit Court.

See District Court Rules, June Term, 1849, p. 499.

Rule 178.

Summary proceedings, in all respects not specified in the preceding rules, are to be governed by the general course of procedure of the Court.

See District Court Rules, June Term, 1849, p. 499.

PRACTICE IN INFORMATIONS.

[Rules 179 to 189 inclusive, hereunder, were adopted November 6th, 1838.]

Rule 179.

Informations on seizures upon land or water are to be drawn in a plain and concise form, only referring to, without reciting, statutes or sections of statutes at large. The information should set forth the gravamen of the suit by plain and issuable allegation; and, when *in rem*, the property demanded as

forfeited is to be specified, together with the alleged cause of forfeiture. Informations are subject to the same general rules, as to their structure and amendment, as ordinary libels.

See Admiralty Rule 22, p. 336.

Rule 180.

Proceedings *in rem* for a forfeiture, and *in personam* for an offence, fine, penalty, or debt, may be joined in one information, when having relation to the same transaction.

Rule 181.

On filing an information *in personam* or *in rem*, the clerk shall issue process thereon, corresponding as nearly as may be with that employed in the instance Court of Admiralty in similar cases. But process *in personam* may be, in the first instance, a *capias*, or attachment against goods to compel an appearance, or a monition, at the election of the complainant.

See District Court Rule of 28th February, 1871, p. 509.

Rule 182.

No party shall be held to bail on an information *in personam* without the mandate of the Judge, except where bail is required or authorized by statute.

Rule 183.

All rules applicable to the service of, or proceedings in relation to, process in plenary causes in admiralty, shall equally apply to process on informations.

See District Court Rule 123, p. 475.

Rule 184.

If the information filed is multifarious or ambiguous, or does not supply plain allegations upon which issue can be taken, or a distinct reference to the statute upon which it is founded, the defendant or claimer may move the Court to have it reformed, giving two days' previous notice, together with a specification of the exceptive parts, to the District Attorney or proctor in whose name it is filed. It may be amended, of course, in conformity to such notice; if not reformed within two days after

pronounced defective by the Court, the defendant may take an order of discharge from the action.

Rule 185.

Amendments may be had to informations, in any stage of the cause ; but, if after an issue is formed between the parties, it shall be on payment of all costs which may have accrued by means of the amendment or the defective pleading.

Rule 186.

In informations *in rem*, a delivery, on stipulation, of property seized, or a sale of perishable articles, may be had, as in case of proceedings in the instance Court of Admiralty.

Rule 187.

The claimer shall appear and interpose his claim or plea, on informations *in rem*, within the same time and in the same manner as in causes on the instance side of the Court of Admiralty ; and shall appear and plead to informations *in personam* within the same time and in the same manner as in causes at common law ; but no plea other than in abatement, the general issue, former recovery, pardon or remission of the offence, fine or forfeiture, shall be received.

Rule 188.

Instead of a traverse of each separate cause of forfeiture alleged in the information, the defendant may plead, as a general issue to an information *in rem*, "that the several goods in the information mentioned did not, nor did any part thereof, become forfeited in manner and form as in the information in the behalf alleged."

Rule 189.

Putting in and justifying bail on behalf of the defendants on arrest, and the proceedings to and on trial and execution, where a trial by jury must be had, shall be the same as in cases of common law jurisdiction.

COMMON LAW PRACTICE.

[Rules 190 to 223 inclusive, hereunder, were adopted November 6th, 1838.]

Rule 190.

Process commencing suits at common law, except on bail bonds, must be returnable at a stated term. In suits on obligations or agreements to pay money, damages may be claimed in the declaration, and judgment be taken beyond the amount stated in the writ.

Rule 191.

When the *capias* has been served on the real party intended, the plaintiff, before or after its return, may amend, of course, any error in the name of the party inserted in the process, giving the defendant notice of such amendment; and, when the real name is not known, process may be issued against the person by a fictitious name.

Rule 192.

When bail is not required, it shall be a sufficient service of the *capias*, or other mesne process *in personam*, for the marshal to show such process to the defendant, or offer to show it, and, at the same time, leave with him a true copy thereof; in which case, the marshal shall indorse his return "personally served." The same rules and orders may be taken on filing such return, as if common bail had been filed, or the defendant had indorsed his appearance on such process.

Rule 193.

Bail shall not be exacted, in actions of debt or informations on penal statutes, for a fine, penalty, or forfeiture, without the order of the Judge indorsed on the process, except where otherwise provided by statute. To obtain the order, it must be shown, for cause, that the defendant is a transient person, or that there is reason to believe he is about to depart out of the jurisdiction of the Court.

Rule 194.

In bailable suits in behalf of the United States, wherein the

plaintiffs are entitled, by any statutory provisions, to have judgment entered at the return term of the writ, the District Attorney may waive special bail, and file common bail, on the return of the writ, and proceed to judgment accordingly.

Rule 195.

In the cases last specified, if the District Attorney takes an assignment of the bail bond, the writ may be issued thereon the first day of term, and be made returnable the same day, or any subsequent day in term or vacation.

Rule 196.

When special bail is required, it shall be put in and perfected on the return of the writ, in default whereof a rule may be entered *instantly*, that the marshal bring in the body of the defendant; but, in such case, if the defendant is arrested in this or the county of Kings, written notice of the intention to enter such rule shall be given the marshal two days previously, and six days, if the defendant is arrested in any other county of the District.

Rule 197.

All other proceedings in such cases shall be the same as in other common law actions in this Court.

Rule 198.

In suits in which the United States shall be plaintiffs, or in which they shall be interested, though not plaintiffs, and in which the defendant shall be held to bail, the assignment of the bail bond, and the acceptance thereof by the plaintiff's attorney, shall not be deemed to preclude him from excepting to the sufficiency of the special bail; and the marshal shall become responsible for good bail in like manner as if the bail bond had not been assigned and accepted as aforesaid.

Rule 199.

In recognizance of bail in civil suits, the sum for which the suit is instituted shall be expressed in the bail piece, and, in suits where the sum demanded exceeds ten thousand dollars,

two or more bail may justify for proportionate parts of such amount, in sums to be determined by the Judge.

Rule 200.

Bail desiring to surrender the principal, or the principal wishing to surrender himself in discharge of his bail, may give two days' notice in writing to the attorney of the plaintiff of the time and place of surrender.

Rule 201.

Two certified copies of the bail piece being produced to the Judge, with proof of the due service of such notice, he will indorse on each a *committitur* of the principal to the custody of the marshal.

Rule 202.

On the written admission of the marshal, or due proof that the principal is in his custody under such *committitur*, and no sufficient cause being shown to the contrary, the Judge will immediately thereupon order an *exoneretur* to be entered.

Rule 203.

Such order and certified copy of the bail piece being filed, the clerk shall indorse an *exoneretur* on the bail piece, and also enter in the registry of bail the discharge thereof. An *exoneretur* may also be entered upon filing the written consent of the plaintiff's attorney, without an order of the Judge.

Rule 204.

An immediate *committitur*, before notice given, may be had, on proof satisfactory to the Judge, that the principal is about to depart the District, or that the bail cannot, with safety, await the expiration of such notice, before a surrender is made.

Rule 205.

In such case, the surrender shall be made in conformity to the present practice of this Court, and may be made on the bail bond, or by putting in special bail before the return day of the writ.

Rule 206.

In case the defendant is held in custody out of this District

in any jail, the use of which shall have been ceded to the United States, for the custody of prisoners, a surrender to the custody of the marshal of the District in which such jail is situated, may be made, in the same manner as before designated; but such surrender shall be at the request of the bail alone.

Rule 207.

No plea shall be received, in any suit instituted in this Court upon a bond executed to the United States for the payment of duties, or against persons accountable for public money, or in any suit instituted upon a bail bond taken in consequence of such suit, unless such plea shall be accompanied by an affidavit of the truth of the matters in the said plea contained.

Rule 208.

In suits in behalf of the United States, in which the plaintiffs are by statute entitled to judgment at the return term of the writ, the declaration may be filed in open Court, on the day the writ is returned; and proper proceedings may be thereon taken for perfecting judgment *instanter*, unless a plea is filed and a continuance of the cause allowed by the Court.

Rule 209.

If the defendant pleads to any such suit, the District Attorney may have the cause placed on the calendar of the same term, and may, without other notice, bring the same to trial, when called, unless at the instance of the defendant, the Court shall grant a continuance in the case.

Rule 210.

Judgments by default, in all cases in which the United States are plaintiffs, or are interested, may be entered up at any time in vacation, as of the preceding term.

Rule 211.

The marshal, his deputies, and all other persons concerned in the service of any process of this Court, are respectively prohibited from becoming bail to the arrest, in any suit depend-

ing in this Court, and, also, from becoming special bail in any suit, unless for the purpose of surrendering the defendant, in which case the surrender shall be made within eight days after special bail shall be put in.

Rule 212.

In cases where the Collector of the customs is entitled to receive the moneys in Court, the same, after deducting the costs, shall be paid him by the clerk, upon an order to be entered, of course, for that purpose.

Rule 213.

All commissions to examine witnesses shall be drawn and engrossed by the clerk, or shall be carefully examined and approved by him, and he shall be entitled to charge for the same as if drawn and engrossed by him.

Rule 214.

On filing every note of issue in common law causes, and for all services not provided for by any law of the United States, the clerk shall be entitled to receive the same fees as are allowed at the time, in the Courts of this State, for similar services, with the addition thereto allowed by the laws of the United States.

Rule 215.

The clerk shall, before the first day of every stated term, prepare two calendars, one for the use of the Court and the other for the use of the bar, which calendars shall each be divided under two titles, the first containing the jury causes noticed for trial, with the usual additions contained in the notes of issue filed, and the second containing the titles of all admiralty suits and issues at law, with the usual additions contained in the notices of trial filed with the said clerk.

Rule 216.

The clerk is prohibited from practising in this Court, in all circumstances whatsoever.

Rule 217.

The bond required by law from the clerk shall be first recorded in a book to be kept in his office, and deposited in that bank in the city of New York in which moneys in Court are deposited, deliverable, upon the order of the Court, to such person as the Court may designate. The marshal's bond shall be filed and recorded in the clerk's office.

Rule 218.

All moneys paid into Court by the officers thereof, or any other person or persons, in causes pending therein, shall be forthwith deposited by the clerk, to the credit of the Court, in the bank in the city of New York which shall be designated on the minutes of this Court as the bank for keeping the moneys of the Court. No money so deposited shall be drawn from said bank, except by order of the Judge, in term or vacation, to be signed by the Judge, and the order shall state the cause or causes in or on account of which it is drawn, and the same shall be entered on record.

See Admiralty Rule 42, p. 342, and District Court Rule 14th April, 1871, p. 510.

Rule 219.

Whenever, after judgment or decree for a sum certain, and before execution issued thereon, any party shall pay into Court the amount thereof, together with the costs taxed; or, whenever the marshal (or the proper officer) shall return process of execution satisfied, and pay the amount of the judgment or decree, and costs, upon which such process issued, into Court, the clerk shall forthwith, and without other authorization, enter satisfaction of record of such judgment or decree, at the charge of the party in whose favor such judgment or decree may be rendered.

Rule 220.

The clerk's costs for entering satisfaction of judgment may be taxed, in the first instance, by the party obtaining the same.

Rule 221.

All checks for money to be drawn out of the bank, in causes

in which money is deposited, shall be drawn and signed by the clerk as clerk, and such check shall be written immediately under the order of the Judge, or on the same paper.

Rule 222.

The clerk shall exhibit to the Court, on the first day of each stated term, a full and particular statement or account of all moneys remaining therein, or standing to his credit as clerk, subject to the order of the Court, stating particularly on account of what causes such moneys are deposited, which account and the vouchers thereof shall be filed in Court.

Rule 223.

The clerk shall provide a book, in which he shall keep a full and particular account, in each cause depending in the Court, of all moneys brought into Court, and of the payment thereof; and such book and the accounts therein shall, at all times, be open to the inspection and examination of the Judge, the attorney of the United States, and the marshal of the District; and any particular account shall also be open to the inspection of any person interested therein.

MISCELLANEOUS RULES.

[Rules 224 to 241 inclusive, hereunder, were adopted November 6th, 1838. The date of the adoption of the remaining Rules is indicated at the head of each Rule.]

Rule 224.

On an indictment found by the grand jury, the District Attorney may forthwith sue out a *capias* or attachment, under the seal of the Court, for the arrest and commitment of the party indicted; such writ may also issue, if the defendant fails to appear pursuant to his recognizance given after indictment found.

Rule 225.

Where default is made by any party or witness bound by recognizance in any criminal proceeding, the clerk shall immediately issue a *scire facias* thereon.

Rule 226.

The amount of forfeited recognizances, and all fines imposed and collected, shall be paid into Court, to be accounted for by the clerk with the United States Treasury.

Rule 227.

When a fine is imposed by the Court on any person for any cause, and the party is not thereupon committed, and such fine is not discharged previous to the close of the term, the clerk shall issue to the marshal a warrant of execution, commanding him to levy and make such fine of the goods and chattels, or, in default thereof, of the lands and tenements of the party.

Rule 228.

Such fine may, on application by the party, and sufficient cause shown, before payment of the same out of Court into the Treasury or otherwise, be mitigated or remitted, at any term succeeding that in which it was imposed.

Rule 229.

In cases wherein the marshal of the District, or his deputy, is a party in interest, process shall be directed and delivered to the sheriff or under sheriff of the city and county of New York for the time being, who are hereby, pursuant to the statute in such case made and provided, appointed to serve and execute such process.

Rule 230.

Special bail may be put in and filed, for the purpose of surrendering the principal, before the return day of the writ.

Rule 231.

Bail to the arrest may surrender the principal, or he may surrender himself in their exoneration, upon the bail bond given on his arrest.

Rule 232.

Copies of the bail bond, certified by the marshal or his deputy, may be used for that purpose, in the same manner as certified copies of a bail piece.

Rule 233.

Proceedings against the marshal or any other officer of the Court, by attachment of course, and the filing of interrogatories for not returning the process of the Court, are abolished.

Rule 234.

Every order for the marshal or other officer of the Court to show cause why an attachment shall not issue against him, shall state the true cause or ground upon which such attachment is demanded.

Rule 235.

On due service of a certified copy of such order, the party against whom it is entered shall be bound to appear on the first sitting of the Court four days thereafter, and, by affidavit filed in Court, purge himself of every default or misfeasance in such order specified, to the same extent as if he had answered to interrogatories framed thereon.

Rule 236.

If such officer fails, in the judgment of the Court, so purging himself, the Court shall forthwith proceed against such officer, to commit him fully for contempt, or otherwise, the same as if he had insufficiently answered interrogatories filed against him on his attachment.

Rule 237.

No writ of attachment shall issue, in the first instance, against any officer of this Court, without the special mandate of the Judge.

Rule 238.

All notices served on an agent, or on attorneys or proctors residing out of the city and county of New York (and not having an office or place of business in this city, in Brooklyn, or Williamsburg), shall be double the time ordinarily required.

Rule 239.

No special sessions will be held for the trial of jury causes, nor out of the city of New York, without a special order of the

Court entered upon the minutes, and published in a newspaper in the city of New York, and also in one nearest the place where the Court is to be held (if out of the city), at least fifteen days previous to such sitting.

Rule 240.

In all cases not provided for by the rules of this Court, the rules of the Circuit Court of the United States for this District, for the time being (whether adopted before or after these rules), so far as the same may be applicable, shall regulate the practice of this Court; and, when there is no rule of the Circuit Court to apply, then the rules of the Supreme Court of this State, now in force, so far as the same may be applicable, shall govern.

Rule 241.

The arrangement of rules under distinct heads of practice, is not to prevent their governing every mode of procedure in Court to which they may be applicable; but, if differing provisions are adopted, the rules in collision are to be restricted each to the head of practice under which it may be classed.

APRIL 16TH, 1847.

ORDERED, that the standing Rule No. 45, of this Court, in admiralty, be hereafter applied alike to suits *in personam* and *in rem*.

DECEMBER 1ST, 1847.

No decree shall be entered by default, or consent of parties in Court, ordering the condemnation and sale of property arrested on process *in rem*, or for the distribution of the proceeds thereof in Court, or of the avails of a stipulation or bond given for the value of such property, unless publication, according to the course of the Court, shall have been duly made before the return day of the monition issued with the attachment in the case.

All reports of commissioners, assessors, adjusters, &c., on the matters referred by order of the Court, shall be filed in Court, at the opening of the Court, on Tuesdays of the stated or special terms, unless otherwise specially allowed by the Court, and

on two days' previous notice in writing to the party to be affected thereby.

Exceptions to such reports shall be filed before or at the time confirmation thereof is moved in Court, unless further time is allowed by order of the Court, and no exception to any report can be received on file without the party offering it has duly filed stipulations in the cause, according to the course of the Court (unless he be excused by the standing rules from stipulating).

FEBRUARY 9th, 1849.

ORDERED, that the Commissioners appointed by the Circuit Court of the United States for the Southern District of New York, to take affidavits, bail, &c., under the several Acts of Congress, be Commissioners authorized by this Court to do all the acts, and exercise and be vested with all the powers, jurisdiction and authority contained in and conferred by the Act of Congress of the United States, passed August 12th, 1848, and entitled "An Act for giving effect to certain treaty stipulations between this and foreign Governments, for the apprehension and delivering up of certain offenders."

JUNE TERM, 1849.

To prevent unnecessary multiplication of suits, and the accumulation of costs for the recovery of seamen's wages, the following additional RULES IN SUMMARY ACTIONS are adopted :

Rule 1.

In suits *in personam* for wages, where the amount sworn to be due, in the libel, is less than fifty dollars, the clerk shall not issue process without the usual stipulation for costs, unless the libel be accompanied by satisfactory proof that the respondent is about to leave the district ; or by an allocatur of the Judge, or by a certificate of a Commissioner of the Court, that, upon due service of a summons to the respondent, to appear before him, sufficient cause of complaint whereon to found process appeared.

Rule 2.

Such summons shall be served at least one day previous to the day of hearing therein mentioned, and if it shall appear, on

the hearing, to the satisfaction of the Commissioner, that the wages claimed have been paid or forfeited, he shall refuse the certificate. And, if a reasonable offer of compromise shall be made on such hearing, by either party, and be rejected by the other, the Commissioner shall add a certificate of such fact, and, in case of final recovery by the party rejecting such offer, he shall recover no costs. No costs shall be taxed for the proceeding, unless the Commissioner shall certify that a demand of wages was made by the seamen a reasonable time previous to taking out the summons, and then the proctor shall be allowed no more than \$1 $\frac{25}{100}$, the ordinary fees for attendance and motion in Court.

Rule 3.

No fees shall be taxed to the marshal, clerk or witness on such proceedings, unless, by special mandate of the Judge, a subpoena or attachment is issued to compel the attendance of witnesses.

Rule 4.

The Commissioner's fees for his services thereon shall not exceed one dollar for a single sitting, and every adjournment granted shall be at the expense of the party obtaining it; if, however, it is required by the parties that the Commissioner take down in writing the testimony heard on the summons, he shall be allowed therefor the customary fees for like services. Proof so taken in writing may be used by either party, on the hearing in Court, in case the suit is further prosecuted.

Rule 5.

No more than one process shall issue against the master or owners, at the same time, for wages claimed by a crew, or any part thereof, for the same voyage, nor during the pendency of a suit therefor, nor shall costs be taxed for more than one retainer or libel, in such cases, unless an order of the Judge, on cause shown, be previously had, authorizing suits therefor. Seamen claiming wages for the same voyage may file an affidavit stating the amount due them, and, if such affidavit be filed before the issue of process, the clerk may order the respondent to be held to bail in a sum exceeding by \$100 the whole amount of such claim.

Rule 6.

The bail or stipulation given by the master or owner, on such process, shall be conditioned to abide the order of the Court in the particular suit, and in favor of such other parties as the Court may grant leave to join therein.

DECEMBER 23d, 1850.

No counsel will be permitted to speak, in the argument of any cause in the Court, more than one hour, without the special leave of the Court, granted before the argument begins.

JANUARY 29th, 1851.

Except as may be from time to time otherwise specially ordered by the Court, when, hereafter, a *venire* shall issue, pursuant to the standing Rules of the Court, for the purpose of summoning petit jurors to serve in this Court, the marshal, or other officer to whom such *venire* shall be directed, shall, with the clerk or his deputy, repair therewith to the office of the clerk of the city and county of New York, and there, at least ten days before the return of such *venire*, in the presence of the said clerk of the city and county, and of the marshal, or such officer, the clerk or deputy shall proceed, if the clerk of said city and county shall consent thereto, to draw out of the box of jurors qualified according as the law of the State of New York was on the 20th day of July, 1840, to serve in the highest Court of law thereof, kept by the clerk of the said city and county, the names of so many jurors as, by the said *venire*, shall be required to be named; and the clerk of this court shall immediately make out and certify, under his hand, a panel of the jurors so drawn, with their respective additions and places of abode, and deliver the same to the marshal or other such officer, and the persons so certified shall be summoned to serve as jurors, pursuant to such *venire*, and, if any of the persons whose names are so drawn shall be dead or removed from the city and county, or not qualified, as aforesaid, within the knowledge of the clerk or marshal, then such names shall be disregarded, and the clerk shall forthwith proceed to draw out of the said box other names, until the said panel shall be completed.

Whenever the Court shall order petit jurors, under such

venire, to be taken, wholly or in part, from any county or counties within the District, other than the city and county of New York, the panel or panels thereof shall be drawn, certified and summoned in like manner as is directed in the preceding order or Rule.

See District Court Rule of 11th November, 1867, p. 505.

MARCH 2d, 1852.

No case, after being called on the docket, will be allowed to retain its priority, except for the cause of sickness of some one whose attendance upon it is necessary, or because of other inevitable accident, nor will a case so called be assigned for hearing at a future day but for like causes.

Each Saturday of the term is assigned for hearing special motions, and the docket will not be called on these days.

See District Court Rules of January Term, 1857, p. 502, and of 22d February, 1868, p. 506.

JANUARY TERM, 1857.

All cases placed upon the day docket shall be deemed set down absolutely for hearing or trial upon that day, and no motion for postponing such cases, or assigning them for hearing on a different day, will be entertained by the Court, except for causes not existing, or not known to the party making the application, at the time the case was put upon the day docket.

Cases must be put upon the day docket in the order they stand on the term calendar, unless otherwise directed by the Court, for cause shown prior to the making up of the day docket.

Cases on the day docket shall retain their priority from day to day, until called for hearing, and shall have preference to assigned cases ; and each case not moved to hearing in its place shall go to the foot of the term calendar.

See District Court Rules of 2d March, 1852, p. 502, and of 22d February, 1868, p. 506.

OCTOBER 1st, 1857.

Hereafter, to obtain the approval of the Judge of this Court, of the sufficiency of sureties to bonds or stipulations offered for the discharge of vessels under arrest, upon attachments issued out of this Court, it shall be necessary to give notice in writing, a reasonable time previous to the application, to the proctor of

the libellant in the action, stating the time and place application will be made for such approval, and the name, occupation and residence of the sureties to be offered ; and the application shall be accompanied by an affidavit proving the service of such notice.

MAY 28th, 1859.

COSTS TAXABLE TO COMMISSIONERS APPOINTED AND ACTING ON REFERENCES, UNDER RULE 44 OF THE RULES OF PRACTICE FOR THE COURTS OF THE UNITED STATES IN ADMIRALTY AND MARITIME JURISDICTION, PRESCRIBED BY THE SUPREME COURT OF THE UNITED STATES AT THE JANUARY TERM, 1845, AND UNDER THE RULES OF PRACTICE IN ADMIRALTY, ADOPTED BY THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

It being made a question of taxation, what fees or compensation may be lawfully allowed to said officers, for services rendered by them, under their appointments by authority of the above Rules of Court ; and it appearing that the Act of Congress, entitled " An Act to regulate the fees and costs to be allowed Clerks, Marshals, and Attorneys of the Circuit and District Courts of the United States, and for other purposes," approved February 26th, 1853, (10 United States Stat. at Large, 161,) makes no provision for compensating Commissioners appointed by the Courts under the aforesaid Rules for their services rendered in aid of the administration of justice, in the matters and cases therein specified ; and we being of opinion, that these special officers of the Court do not come strictly within the Act, and that, upon the usages and doctrines of Courts of the United States, officers called upon to render services in those Courts, according to their rules and modes of practice, for which no specific fees or costs are appointed by statute law, will be awarded compensation therefor by the Courts respectively in which the services are performed, corresponding in amount to that allowed by law in the State, for similar services rendered by State officers, in a like capacity, particularly in Chancery procedures ; (1 Blatchf. C. C. R., 652 ; *Hathaway v. Roach*, 2 Woodb. & M., 63 ;) and it further appearing to us, that such is an equitable and sound rule to be applied in relation to this class of officers, especially as the

above cited statute law of costs contains no prohibition of compensation to them by authority of the Courts otherwise than through a positive appointment by statutory law: We are, therefore, of opinion that such Commissioners are entitled to have taxed in their behalf, by the proper taxing officers, the rate of fees or costs allowable in the Court of Chancery of the State of New York, to Masters in Chancery of that Court, for services therein performed by them, on the 1st of September, 1845, being the time the Rule of Practice aforesaid adopted by the Supreme Court went into operation, unless in particulars in which the rate of allowance then prevailing in the State Court shall have been rescinded or modified by subsequent regulations made by orders of the Courts of the United States; and we designate as proper subjects of taxation, in cases where those services have been actually performed by such Commissioners, in admiralty and maritime causes referred to them pursuant to the aforesaid Rules, the following items, embraced in the Rules and Orders of the Court of Chancery of the State of New York, revised and established by Chancellor Walworth, in 1844, under the head of "Master's Fees," (pages 190, 191,) to wit:

Commissioners' Costs.

For signing every summons for a witness or party to attend a reference, *twelve cents*.

For attending at the time and place, and adjourning the same at request, or upon reasonable cause, *one dollar*.

Attendance and hearing every argument upon any matter referred to him, when litigated, *three dollars*; and when he proceeds *ex parte*, *one dollar*.

Attendance and settling his report after argument, if both parties attend and litigate the same, *three dollars*; if he proceeds *ex parte*, *one dollar*.

For writing out and certifying the testimony of witnesses taken orally before him on the hearing, to file with his report, for every folio of 100 words, *twenty cents*.

Copies of the same furnished, on request, to either party, for each folio, *ten cents*.

Drawing every report in pursuance of an order of reference to him, (exclusive of schedules and the written proofs,) for every folio, *twenty cents*.

Drawing all schedules to be annexed to reports, for every folio, *ten cents*.

Copies of reports and schedules, to be filed, for every folio, *ten cents*.

Copies of reports and schedules and all other proceedings, furnished by him to the parties, upon request, for every folio, *six cents*.

Marking every exhibit produced before him on a reference, with the title of the cause, and signing the same, *six cents*.

S. NELSON.

SAM'L. R. BETTS.

NOTE.—The foregoing Rule was adopted in the Circuit Court of the United States for the Southern District of New York as well as in the District Court for said District on the day of the date thereof.

FEBRUARY 7TH, 1863.

The Rules governing the practice of the Court, on the instance side, in admiralty, shall not authorize interlocutory decrees, in suits *in rem*, taken by default, on the return of process, to direct the sale of the *res* condemned thereby, before the sum chargeable thereon be decreed by the Court, unless by consent of the parties in interest, or the express order of the Court, because of the perishing or perishable condition of the *res*.

APRIL 26TH, 1865.

In all cases, where, by the rules of this Court, a surety is required to be resident in this District, the rules are so modified as to require the surety to be resident in this District, or in the Eastern District of New York.

See District Court Rules 44, p. 460 and 59, p. 463.

NOVEMBER 11TH, 1867.

It having been found impracticable to obtain jurors for the Courts of the United States in this District from the jury boxes used by the authorities of the State of New York, in the city and county of New York, for the procuring of juries for the Courts of said State in said city and county,—It is now ordered, that the clerk of this Court and the clerk of the Circuit Court of the United States for this District, make out and file in the office of the clerk of said Circuit Court, a list of

persons to serve as jurors in the Courts of the United States for this District, and that such list be made out in the same manner as, by the laws of the State of New York, the public officers charged with the duty of making out the list of jurors to serve as jurymen in the Courts of said State in and for said city and county, are required to make out such list. And it is further ordered, that the said clerks, from time to time, correct and revise such list, as they may deem it necessary so to do, to the end that such list may be made and kept, so far as practicable, in conformity with the laws of the State of New York; and it is further ordered, that, from the list so made and filed, grand and petit jurors shall be selected, and shall be drawn by lot, in accordance, so far as practicable, with the laws of the State of New York, by the said clerks, as from time to time the same may be ordered by the Courts of the United States in this District, and a list of the persons so drawn, certified by the said clerks, shall be attached to the writ of *venire* issued to the marshal for the summoning of such jurors; and it is further ordered, that, as to all matters relating to the selecting, drawing and summoning of jurors for said Courts, the said clerks follow, so far as practicable, the provisions in respect thereto contained in the laws of the State of New York.

See District Court Rules of 29th January, 1851, p. 501.

FEBRUARY 22D, 1868.

I.—The calendar of admiralty causes shall hereafter be permanent, the causes being renumbered every January. Notices of trial shall be notices of four days, and for the first Tuesday of the term, and shall not be required, except when a cause shall be placed upon such calendar.

II.—A calendar shall be made up by the clerk before the next March term. The causes in which either party shall file a note of issue on or before the Thursday before the opening of the March term, containing the date of the issue, shall be placed on the calendar according to the dates of the issues. Thereafter causes shall be placed on the calendar by the clerk in the order in which notes of issue shall be filed by either party.

III.—Causes may be generally reserved or set down for any

particular day in term, except Saturdays, by consent of parties ; but no cause shall be so reserved or set down after the same shall be placed upon the day calendar, except upon the order of the Court. When a cause shall be called in its order upon the day calendar without being tried, the same shall go to the foot of the calendar, and the issue shall thereafter be of that date, unless otherwise ordered by the Court at the time of being passed.

IV.—There shall be a day calendar prepared, which shall be posted in one or more conspicuous places in the building in which the Court room is situated, by three o'clock of the day previous (excluding Saturday), and no more than seven causes shall be placed upon the day calendar for any one day, and they shall be placed upon such day calendar according to the dates of their several issues.

V.—A cause generally reserved, may, by order of the Court, upon application, and upon notice of two days, be placed upon the day calendar for trial for any day which the Court, upon such application, shall direct, subject to the provisions of Rule IV., and not to be tried before, by its issue, it shall be entitled to be called upon such calendar, except, that the Court may, for special and peculiar reasons, give a cause the preference; and, also, except, that actions for seamen's wages and for salvage, and actions where the property shall actually be in the custody of the marshal, shall have the preference, and shall be placed upon the calendar with such preference, upon any day the Court shall, upon application, direct.

VI.—Causes called on the day calendar, may, for cause shown, be set down for a later day in term, or marked off for the term, without prejudice ; and causes which so go off for the term without prejudice, shall take their places in order at the head of the calendar for the next term.

VII.—When a cause that has been generally reserved is put on the day calendar, the clerk shall receive the usual fee for filing a note of issue.

VIII.—All Rules and parts of Rules heretofore adopted by this Court, not consistent with the foregoing, are hereby repealed.

See District Court Rules of 2d March, 1852, p. 502, and of January Term, 1857, p. 502, and of 24th May, 1870, p. 509.

MARCH 2d, 1868.

The follow regulations are adopted as Rules, by the District Court :

Supplement to Instructions, Series 3, No. 12. Additional regulations respecting suits arising under the Internal Revenue laws. Treasury Department, Office of Internal Revenue, Washington, February 26th, 1868. Information having been, from time to time, received at this office, to the effect that distillation of spirits has been allowed in distilleries which were at the time in custody of the United States marshal, through the connivance of the person or persons employed by the marshal as keeper,—It is hereby ordered, that in all cases where a marshal takes possession of a distillery, by virtue of a process issued for violation of the Internal Revenue laws, he shall immediately cause the head of the still to be taken off, or the machinery to be disconnected, in such manner as to render it impossible for distillation to be carried on. The expenses arising out of compliance with this order should be returned by the marshal as a part of his disbursements in the cause. It is further ordered, that whenever any premises are held in custody by the marshal, under process issued for violation of the Internal Revenue laws, admission to such premises shall at all times be permitted for any Internal Revenue officer who would be entitled to admission were the same not in custody of the marshal. E. A. Rollins, Commissioner. Approved, H. McCulloch, Secretary of the Treasury.

MAY 11th, 1868.

Exceptions to pleadings or to Commissioners' reports, will be heard on Saturdays, on proper notice, without being placed on the calendar.

NOVEMBER 10th, 1868.

In taking testimony, all masters, examiners, referees and commissioners, shall, when testimony is written down by question and answer, number the questions put to each witness, continuously, from the commencement of his direct examination to the final close of his examination, direct and cross.

NOVEMBER 17th, 1868.

The clerk of this Court, in making up the record to be transmitted to the Circuit Court, on an appeal, in pursuance of Rule

No. 53, adopted by the Supreme Court at the December Term, 1854, as one of the rules for regulating proceedings in admiralty, shall not include in such record, as any portion of the testimony on the part of any party, any statement or report of any testimony given *viva voce* in open Court, unless such testimony shall have been taken down in accordance with Rules 124 and 125 of this Court, and shall have become the true minutes of such testimony, in accordance with Rules 124, 125, 126 and 127 of this Court; and no consent of parties shall be of any avail to dispense with or vary so much of said Rules 124 and 125 as requires such *viva voce* testimony given in open Court, to be taken down in the same manner as in jury trials in common law issues, and not *verbatim*, as in depositions *de bene esse*.

Whenever such testimony shall be taken down by the clerk, the legal fees chargeable by him therefor shall be taxable as part of the costs in the cause.

MAY 24th, 1870.

In renumbering, every January, the causes left over on the permanent calendar in admiralty, every cause which, since it was last put upon such calendar, shall have gone to the foot of the calendar more than once, and every cause generally reserved, the date of the issue in which on such calendar shall be a date more than three years prior to the first day of such January, shall be omitted from such calendar. But all such causes may be again placed upon such calendar by the filing of a new note of issue, the date of the issue of any such cause which has gone to the foot of such calendar, to be the date of issue which it last bore upon such calendar. A new note of issue fee shall be paid for every cause that is so renumbered; but, by a written consent of the proctors in any cause, it may at any time be stricken off from the permanent calendar.

See District Court Rules of 2d March, 1852, p. 502, of January Term, 1857, p. 502, and of 22d February, 1868, p. 506.

FEBRUARY 28th, 1871.

In all suits *in rem* against property seized in this District under the provisions of any law of the United States relating to the customs, the clerk, on receiving a certificate from the collector or other principal officer of the customs in this District, setting forth that such property is in his custody, shall,

in issuing a monition against such property, so alter the usual form, that the monition shall command the marshal to attach the property by leaving with the collector or other person having such property in custody a copy of the monition, and also a notice requiring such collector or other person to detain such property in custody until the further order of the Court respecting it, and to give due notice, &c. (in the usual form).

See District Court Rules 15, p. 454, and 181, p. 487.

APRIL 14th, 1871.

All moneys which shall be paid into this Court, or be received by any officer thereof, shall be forthwith deposited in "The Central National Bank of the City of New York," a designated depository of the United States, in the name and to the credit of this Court: *Provided*, that nothing herein shall be construed to prevent the delivery of any such money upon security, according to agreement of parties, under the direction of the Court.

See District Court Rule 218, p. 494.

NOVEMBER 21st, 1873.

In all cases brought to the Circuit Court from this Court, by writ of error, or appeal, or petition of review, the clerk of this Court shall annex to, and transmit with, the record or proceedings of this Court, a copy of any opinion or opinions filed in this Court upon the decision of any matter contained in such record or proceedings, and, if no such opinion has been filed, the clerk shall so certify.

FEBRUARY 9th, 1874.

The clerk shall prepare a list, on which he shall place all suits and matters which are to be brought before the Court on Saturdays, on notice to an adverse party, by motion, petition, order to show cause, or otherwise (except orders to show cause for adjudication in bankruptcy, reports of referees on denials of bankruptcy, hearings for discharges in bankruptcy, and hearings on applications to annul discharges in bankruptcy), of which a memorandum containing the title of the suit or matter, and the subject of the notice, and the names of the attorneys, solicitors or proctors on both sides, shall be filed with the clerk for the purpose. The order of cases on the list shall be

the order of time in which the memoranda are filed with the clerk. Every suit and matter placed on the list shall remain thereon until the hearing on such notice is had, or until it is otherwise disposed of, and shall not lose its place by an adjournment of it. It may be adjourned at any time, by written consent of parties, to any Saturday, such consent to be handed to the crier of the court. The list will be called in its order every Saturday. A case called and not answered to by either party will be stricken off. The fee to the clerk for every memorandum filed shall be ten cents. A duplicate list shall be prepared for the use of the bar.

MAY 29th, 1878.

The clerk, or other officer of the Court, receiving any fees, shall deliver to the party paying the same a receipted bill, showing every item included therein, as allowed by Revised Statutes, Title XIII., chap. 16, or other statute authorizing the charge; and no fees so paid shall be hereafter taxed as disbursements unless such bill of items be presented upon the taxation.

This rule shall apply to searches and copies of papers furnished. No charge shall be made for copies of papers not ordered or accepted by the party charged. Any party aggrieved by taxation of costs or the exaction of fees by any officer whose office is in the same building with the Court, may apply to the Court for relief upon five minutes' notice to the officer taxing the costs or exacting the fees.

OCTOBER 5th, 1878.

In suits *in rem* for damages, if the libellant's proctor shall notify the marshal that no keeper is required, no fees for a keeper or for the custody of the vessel from the time of such notice shall be allowed to the marshal, or recoverable as costs, unless the Court shall, for cause shown, otherwise order.

OCTOBER 7th, 1878.

Motions in Admiralty cases will be heard on Tuesday after return of process, except during a jury term; and during a jury term they will be heard on Tuesday at 10 o'clock, A.M.

OCTOBER 11th, 1878.

In pursuance of the provisions of section 915, of an Act entitled, "An Act to revise and consolidate the Statutes of the United States in force on the first day of December, Anno Domini one thousand eight hundred and seventy-three," approved June 22d, 1874, it is ordered that the provisions of the Act of the Legislature of the State of New York, entitled, "An Act relating to Courts, officers of justice and civil proceedings," passed June 2d, 1876, and the provisions of any Act heretofore passed by said Legislature, amending said last-named Act, so far as such provisions relate to a remedy by attachment against the property of a defendant, are hereby adopted by this Court as rules of this Court in respect to a remedy by attachment against the property of a defendant in a common law cause in this Court.

NOVEMBER 6th, 1878.

Any cause in which all the testimony is taken by deposition, shall be entitled to a preference on the calendar.

DECEMBER 29th, 1881.

In pursuance of the provisions of sections 915 and 916 of an act entitled "An act to revise and consolidate the Statutes of the United States in force on the first day of December Anno Domini, one thousand eight hundred and seventy-three," approved June 22d, 1874, it is Ordered that the provisions of the Act of the Legislature of the State of New York, entitled "An act relating to Courts, officers of justice and civil proceedings" passed June 2d, 1876, as amended by the act of said Legislature entitled "An act supplemental to the Code of Civil Procedure" passed May 6th, 1880, and the provisions of any other act heretofore passed by said Legislature amending either of said acts, so far as such provisions relate to a remedy by attachment against the property of a defendant, or to a remedy by execution or otherwise to reach the property of a judgment debtor, are hereby adopted by this Court as rules of this Court in respect to a remedy by attachment against the property of a defendant in a common law action in this Court, and in respect to a remedy by execution or otherwise to reach the property of a judgment debtor in a common law action in this Court.

NOVEMBER 7th, 1882.

All motions will be heard on Tuesday at 10 A.M.

DECEMBER 11th, 1882.

On filing the written consent of the attorneys for all the parties, orders for discontinuance, extension of time and substitution of attorney may be entered of course by the clerk in actions at common law without the special direction of a judge.

MARCH 15th, 1883.

Rule 44 is hereby amended by adding at the end the following: "And the like stipulation with surety for costs in the sum of \$100 shall be filed by the respondent in actions *in personam* at the time of entering his appearance or answer, or the same shall not be received unless otherwise specially ordered."

See District Court Rule 44, p. 460.

OCTOBER 2d, 1883.

Admiralty causes not involving over \$250 which can be tried in an hour, may be heard on any Friday for which they are set down by order granted on any previous motion day, to be applied for on affidavit of the facts, served, with four days' notice of motion, upon the other proctors in the cause. If on the trial the hearing is not completed within an hour, the cause may be ordered to the foot of the calendar or the remaining testimony taken out of Court, and the cause submitted thereupon.

NOVEMBER 20th, 1883.

In suits *in rem* in collision cases, if one of the colliding vessels be wholly lost so that no cross-libel could be maintained, the defendant, if he shall desire to recoup or offset any damage to his own vessel in case it should be determined on the trial that the collision occurred through the fault of both vessels, must in his answer state his damages in like manner as upon filing a cross-libel; and such statement of damage shall be without prejudice to any defence he may make that the collision was wholly the fault of the other vessel.

RULES
IN
PRIZE CASES
OF THE
DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF NEW YORK.

[The following Rules of the District Court of the United States for the Southern District of New York in Prize Cases are reprinted from Blatchford's Prize Cases.]

Rule 1.

There shall be issued, under the seal and authority of this court, commissions to such persons as the court shall think fit, appointing them severally commissioners to take examinations of witnesses in prize causes *in preparatorio*, on the standing interrogatories, which have been settled and adopted by this court, and all other depositions which they are empowered to require, and to discharge such other duties in relation to ships, or vessels, or property brought into this district, as prize, as shall be designated by the said commissions, and the rules and orders of this court.

Rule 2.

The captors of any property brought into this district as prize, or some one on their behalf, shall, without delay, give notice to the district judge, or to one of the commissioners aforesaid, of the arrival of the property, and of the place where the same may be found.

Rule 3.

Upon the receipt of notice thereof from the captors, or dis-

strict judge, a commissioner shall repair to the place where the said prize property then is; and if the same be a ship, or vessel, or if the property be on board a ship or vessel, he shall cause the said ship or vessel to be safely moored in sufficient depth of water, or in soft ground.

Rule 4.

The commissioner shall, in case the prize be a ship or vessel, examine whether bulk has been broken; and if it be found that bulk has been broken, one of the said commissioners shall take information upon what occasion, or for what cause, the same was done. If the property captured be not a ship or vessel, or in a ship or vessel, he shall examine the chests, packages, boxes, or casks, containing the subject captured, and shall ascertain whether the same has been opened, and shall, in every case, examine whether any of the property originally captured has been secreted or taken away subsequently to the capture.

Rule 5.

The commissioner in no case shall leave the captured property until he secure the same by seals upon the hatches, doors, chests, bales, boxes, casks, or packages, as the case may require, so that they cannot be opened without breaking the said seals; and the said seals shall not be broken, or the property removed, without the special order of the court, excepting in case of fire and tempest, or of absolute necessity.

Rule 6.

If the captured property be not a vessel, or on board a vessel, the commissioner shall take a detailed account of the particulars thereof, and shall cause the same to be deposited, under the seals as aforesaid, in a place of safety, there to abide the order or decree of this court.

Rule 7.

If no notification shall, within reasonable time, be given by the captors, or by any person in their behalf, of any property which may be brought as prize within this district, and the commissioners, or either of them, shall become informed thereof

by any means, it shall be the duty of the said commissioners, or one of them, to repair to the place where such property is, and to proceed in respect to the same as if notice had been given by the captors.

Rule 8.

The captor shall deliver to the judge—at the time of such notice, or to the commissioner or commissioners, when he or they shall, conformably to the foregoing rule, repair to the place where such captured property is, or at such other times as the said commissioners, or either of them, shall require the same—all such papers, passes, sea-briefs, charters, bills of lading, cockets, letters, and other documents and writings as shall have been found on board the captured ship, or which have any reference to or connection with the captured property, and which are in the possession, custody, or power of the captors.

Rule 9.

The said papers, documents, and writings shall be regularly marked and numbered by a commissioner, and the captor, chief officer, or some other person who was present at the taking of the prize, and saw that such documents, papers, and writings were found with the prize, must make a deposition before one of the said commissioners that they have delivered up the same to the judge or commissioner as they were found or received, without any fraud, subduction, or embezzlement. If any documents, papers, or writings, relative to or connected with the captured property, are missing or wanting, the deponent shall, in his said deposition, account for the same, according to the best of his knowledge, information, and belief.

Rule 10.

The deponent must further swear that if, at any time thereafter, and before the final condemnation or acquittal of the said property, any further or other papers relating to the said captured property shall be found or discovered to the knowledge of the deponent, they shall also be delivered up, or information thereof given to the commissioners or to this court, which deposition shall be reduced to writing by the commissioner, and shall be transmitted to the clerk of the court, as hereinafter mentioned.

Rule 11.

When the said documents, papers, and writings are delivered to a commissioner, he shall retain the same till after the examination *in preparatorio* shall have been made by him, as is hereafter provided, and then he shall transmit the same, with the same affidavit in relation thereto, the preparatory examinations, and the information he may have received in regard to the said captured property, under cover and under his seal, to this court, addressed to the clerk thereof, and expressing on the said cover to what captured property the documents relate, or who claim to be the captors thereof, or from whom he received the information of the capture; which said cover shall not be opened without the order of the court.

Rule 12.

Within three days after the captured property shall have been brought within the jurisdiction of this court, the captor shall produce to one of the commissioners three or four, if so many there be, of the company or persons who were captured with, or who claim the said captured property; and in case the capture be a vessel, the master and mate, or supercargo, if brought in, must always be two, in order that they may be examined by the commissioner *in preparatorio* upon the standing interrogatories.

Rule 13.

In the examination of witnesses *in preparatorio*, the commissioner shall use no other interrogatories but the standing interrogatories, unless special interrogatories are directed by the court. He shall write down the answer of every witness separately to each interrogatory, and not to several interrogatories together; and the parties may personally, or by their agents, attend the examination of witnesses before the commissioners; but they shall have no right to interfere with the examination by putting questions or objecting to questions; nor to take notes of the proceedings before the commissioner, to be used otherwise than before the court. All objections to the regularity or legality of the proceedings of the commissioners must be made to the court.

Rule 14.

When a witness declares he cannot answer to any interrogatory, the commissioner shall admonish the witness that, by virtue of his oath taken to speak the truth, and nothing but the truth, he must answer to the best of his knowledge; or when he does not know absolutely, then to answer to the best of his belief concerning any one fact.

Rule 15.

The witnesses are to be examined separately, and not in presence of each other, and they may be kept from all communication with the parties, their agents, or counsel, during the examination. The commissioners will see that every question is understood by the witnesses, and will take their exact, clear, and explicit answers thereto; and if any witness refuses to answer at all, or to answer fully, the examining commissioner is forthwith to certify the facts to the court.

Rule 16.

The captors must produce all their witnesses in succession, and cannot, after the commissioners have transmitted the examination of a part of the crew to the judge, be allowed to have others examined without the special order of the court; and the examination of every witness shall be begun, continued, and finished in the same day, and not at different times. Copies of the standing interrogatories shall not be returned by the commissioner with the examinations, but it shall be sufficient for the answer of the witnesses to refer to the standing interrogatories by corresponding numbers.

Rule 17.

Before any witness shall be examined on the standing interrogatories the commissioner shall administer to him an oath in the following form: "You shall true answer make to all such questions as shall be asked of you on these interrogatories, and therein you shall speak the whole truth, and nothing but the truth, so help you God." If the witness is conscientiously averse to swearing, an affirmation to the same effect shall be administered to him.

Rule 18.

Whenever the ship's company, or any part thereof, of a captured vessel are foreigners, or speak only a foreign language, the commissioner taking the examination may summon before him competent interpreters, and put to them an oath well and truly to interpret to the witness the oath administered to him, and the interrogations propounded, and well and truly to interpret to the commissioners the answers given by the witness to the respective interrogatories.

Rule 19.

The examination of each witness on the standing interrogatories shall be returned according to the following form :

“Deposition of A B, a witness produced, sworn, and examined *in preparatorio*, on the —— day of ——, in the year ——, at the —— of ——, on the standing interrogatories established by the district court of the United States for the southern district of New York; the said witness having been produced for the purpose of such examination by C D, in behalf of the captors of a certain ship or vessel called the ——, (or of certain goods, wares, and merchandise, as the case may be.)

1st. To the first interrogatory the deponent answers that he was born at ——, &c.

2d. To the second interrogatory the deponent answers that he was present at the time of the taking, &c.

Rule 20.

When the interrogatories have all been answered by a witness, he shall sign his deposition, and the commissioner shall put a certificate thereto in the usual form, and subscribe his name to the same.

Rule 21.

No person having or claiming any interest in the captured property, or having any interest in any ship having letters of marque or commissions of war, shall act as a commissioner. Nor shall a commissioner act either as proctor, advocate, or counsel, either for captors or claimants, in any prize cause whatever.

Rule 22.

If the captain or prize-master neglect or refuse to give up and deliver to the commissioners the documents, papers, and writings relating to the captured property, according to these rules, or refuse or neglect to produce, or cause to be produced, witnesses to be examined *in preparatorio*, within three days after the arrival of the captured property within the jurisdiction of this court, or shall otherwise unnecessarily delay the production of the said documents, papers, or writings, the commissioners, or one of them nearest to the place where the captured property may be, or before whom the examination *in preparatorio* may have been already begun, shall give notice in writing to the delinquent to forthwith produce the said documents, papers, and writings, and to bring forward his witnesses; and if he shall neglect or delay so to do for the period of twenty-four hours thereafter, such commissioner shall certify the same to this court, that such proceedings may thereupon be had as justice may require.

Rule 23.

If within twenty-four hours after the arrival within this district of any captured vessel, or of any property taken as prize, the captors, or their agents, shall not give notice to the judge or a commissioner pursuant to the provisions herein made, or shall not, two days after such notice given, produce witnesses to be examined *in preparatorio*, then any person claiming the captured property and restoration thereof may give notice to the judge or the commissioners, as aforesaid, of the arrival of the said captured property; and thereupon such proceedings may be had by the commissioners in respect to the said property, and relative to the documents, papers, and writings connected with the said capture, which the claimant may have in his possession, custody, or power, and relative to the examination of witnesses *in preparatorio*, as near as may be, as is before provided for in cases where the captors shall give notice and examine *in preparatorio*. And the said claimant may in such cases file his libel for restitution, and proceed thereon according to the rules and practice of this court.

Rule 24.

As soon as may be convenient, after the captured property shall have been brought within the jurisdiction of this court, a libel may be filed, and a monition shall thereupon be issued, and such proceedings shall be had as are usual in conformity to the practice of this court in cases of vessels, goods, wares, and merchandise seized as forfeited, in virtue of any revenue law of the United States.

Rule 25.

In all cases, by consent of captor and claimant, or upon attestation exhibited upon the part of the claimant only, without consent of the captor, that the cargo or part thereof is perishing or perishable, the claimant, specifying the quantity and quality of the cargo, may have the same delivered to him, on giving bail to answer the value thereof if condemned, and further to abide the event of the suit; such bail to be approved of by the captor, or otherwise the persons who give security swearing themselves to be severally and truly worth the sum for which they give security. If the parties cannot agree upon the value of the cargo, a decree or commission of appraisement may issue from the court to ascertain the value.

Rule 26.

In cases where there is no claim, an affidavit being exhibited on the part of the captor of such perishing or perishable cargo, specifying the quantity and quality thereof, the captor may have a decree or commission of appraisement and sale of such cargo, the proceeds thereof to be brought into court, to abide the further orders of the court.

Rule 27.

The name of each cause shall be entered by the clerk upon the docket for hearing in their order, according to the dates of the returns of the monitions, and lists of the causes ready for hearing are to be constantly hung up in the clerk's office for public inspection.

Rule 28.

In all cases where a decree or commission of appraisement

and sale of any ship and cargo, or either of them, shall have issued, no question respecting the adjudication of such ship and goods, or either of them, as to freight or expenses, shall be heard till the said decree or commission shall be returned, with the account of sales, and the proceeds, according to such account of sales, be paid into court, to abide the order of the court in respect thereto.

Rule 29.

After the examination, taken *in preparatorio* on the standing interrogatories, are brought into the clerk's office, and the monition has issued, no further or other examinations upon the said interrogatories shall be taken, or affidavits received, without the special directions of the judge, upon due notice given.

Rule 30.

None but the captors can, in the first instance, invoke papers from one captured vessel to another, nor can it be done without the special mandate of the judge; and, in case of its allowance, only extracts from the papers are to be used.

Rule 31.

The invocation shall only be allowed on affidavit on the part of the captors, satisfying the court that such papers are material and necessary.

Rule 32.

Application for permission to invoke must be on service, at least two days previously, of notice thereof, and copy of the affidavit, on the claimants or their agent, (if known to be in this port;) and after invocation allowed to the captors, the claimants, by permission of the judge, for sufficient cause shown, may use other extracts of the same papers in explanation of the parts invoked.

Rule 33.

But when the same claimants intervene for different vessels, or for goods, wares, or merchandise captured on board different vessels, and proofs are taken in the respective causes, and the

causes are on the dockets for trial at the same time, the captors may, on the hearing in court, invoke, of course, in either of such causes, the proofs taken in any other of them; the claimants, after such invocation, having liberty to avail themselves also of the proofs in the cause invoked.

Rule 34.

In all motions for commissions, and decrees of appraisement and sale, the time shall be specified within which it is prayed that the commissions or decree shall be made returnable.

Rule 35.

The commissioners shall make regular returns on the days in which their commission or decrees are returnable, stating the progress that has been made in the execution of the commission or decrees, and, if necessary, praying an enlargement of the time for the completion of the business.

Rule 36.

The commissioners shall bring in the proceeds which have been collected at the time of their returns; and they may be required from time to time to make partial returns of such sums only as are necessary to cover expenses.

Rule 37.

On the returns of commissions or decrees, the commissioners or the marshal must bring in all the vouchers within their control.

Rule 38.

All moneys brought into court in prize causes shall be forthwith paid into such bank, in the city of New York, as shall be appointed for keeping the moneys of the court, and shall only be drawn out on the specific orders of the court, in favor of the persons respectively having right thereto, or their agents or representatives, duly authorized to receive the same.

Rule 39.

At every stated term of the court, the clerk shall exhibit to

the court a statement of all the moneys paid into court in prize cases, designating the amount paid in each particular case, and at what time.

Rule 40.

The statement, when approved by the court, shall be filed of record in the clerk's office, and be open to the inspection of all parties interested, and certified copies thereof shall be furnished by the clerk, on request, to any party in interest, his proctor or advocate.

Rule 41.

When property seized as prize of war is delivered upon bail, a stipulation, according to the course of the admiralty, is to be taken for double its value.

Rule 42.

Every claim interposed must be by the parties in interest, if within convenient distance—or in their absence, by their agent or the principal officer of the captured ship—and must be accompanied by a test affidavit, stating briefly the facts respecting the claim, and its verity, and how the deponent stands connected with or acquired knowledge of it. The same party who may intervene is also competent to attest to the affidavit.

Rule 43.

The captors of property brought in or held as prize, or which may have been carried into a foreign port, and there delivered upon bail by the captors, shall forthwith libel the same in fact, and sue out the proper process. The first process may, at the election of the party, be a warrant for the arrest of the property or person, to compel a stipulation to abide the decree of the court, or a monition.

Rule 44.

The monitions shall be made returnable in ten days, and if the property seized as prize is in port, shall be served in the same way as in the case of monitions issued on the instance side of the court of admiralty on seizures for forfeiture under the revenue laws. In case the property claimed as prize is not

in port, then the monition is to be served on the parties in interest, their agent or proctor, if known to reside in the district, otherwise by publication daily in one of the newspapers of this city, for ten successive days preceding the return thereof.

Rule 45.

Whenever the jurisdiction of the court is invoked upon matters as incident to prize, except as to the distribution of prize-money, there must be distinct articles or allegations in that behalf in the original libel or claim on the part of the party seeking relief. But in case the matters have arisen or become known to the party subsequent to presenting his libel or claim, the court will allow him to file the necessary amendments.

Rule 46.

No permission will be granted to either party to introduce further proofs until after the hearing of the cause upon the proofs originally taken.

Rule 47.

In case of captures by the public armed vessels of the United States, and a proceeding for condemnation against the property seized as prize *jure belli*, or in the nature of prize of war, under any act of Congress, the name of the officer under whose authority the capture was made must be inserted in the libel.

Rule 48.

A decree of contumacy may be had against any party not obeying the orders or process of the court, duly served upon him; and thereupon an attachment may be sued out against him. But no constructive service of a decree or process *vis et modis*, or *publica citatio*, will be sufficient, unless there has been a publication thereof in a daily paper in this city at least ten days immediately preceding the motion for an attachment.

Rule 49.

When damages are awarded by the court, the party entitled thereto may move for the appointment of three commissioners to assess the same; two persons approved by the court will thereupon be associated with a standing commissioner of the

circuit court, the clerk or deputy clerk of this court, if not interested in the matter, whose duty it shall be to estimate and compute the damages, in conformity to the principles of the decree, and return a specific report to the court of the amount of damages, and the particular items of which they are composed.

Rule 50.

Any party aggrieved may have such assessment of damages reviewed in a summary manner by the court, before final decree rendered thereon, on giving two days' previous notice to the proctor of the party in whose favor the assessment is made, of the exceptions he intends taking, and causing to be brought before the court the evidence given the commissioners in relation to the particular excepted to.

Rule 51.

Every appeal from the decrees of this court must be made within ten days from the time the decree appealed from is entered, otherwise the party entitled to the decree may proceed to have it executed. No appeal shall stay the execution of a decree, unless the party, at the time of entering the appeal, gives a stipulation, with two sureties, to be approved by the clerk, in the sum of two hundred and fifty dollars, to pay all costs and damages that may be awarded against him, and to prosecute the appeal to effect.

Rule 52.

If the party appealing is afterwards guilty of unreasonable delay in having the necessary transcripts and proceedings prepared for removing the cause, it will be competent to the other party to move the court for leave to execute the decree, notwithstanding the appeal.

Rule 53.

In all cases of process *in rem*, the property after arrest is deemed in the custody of the court, and the marshal cannot surrender it on bail, or otherwise, without the special order of the court.

STANDING INTERROGATORIES,

REFERRED TO IN THE FOREGOING PRIZE RULES.

[Standing interrogatories to be administered by a prize commissioner to all persons that may be produced as witnesses to be examined *in pre-paratorio*, in relation to any ship or vessel, goods, wares, or merchandise, which may be captured or taken as prize and brought into the southern district of New York.]

Let each witness be interrogated to every of the following questions, and their answers to each interrogatory be written down under his direction and supervision :

1. Where were you born, and where do you now live, and how long have you lived there? Of what prince or state are you a subject or citizen, and to which do you owe allegiance? Are you a citizen of the United States of America? Are you a married man, and, if married, where do your family and wife reside?

2. Were you present at the capture or taking of the vessel, or her lading, or any of the goods or merchandises concerning which you are now examined?

3. When and where were such seizure and capture made, and into what place or port were the same carried? Had the vessel so captured any commission, or letters, authorizing her to make prizes? What and from whom? For what reason or on what pretence was the seizure made?

4. Under what colors did the captured vessel sail? What other colors had she on board, and for what reason had she such other colors?

5. Was any resistance made at the time of the capture, and by whom? Were any guns fired, how many, and by whom? By what ship or ships was the capture made? Were any other and what ships in sight at the time of the capture? Was the

vessel captured a merchantman, a ship-of-war, or acting under any commission as a privateer or letter of marque and reprisal, and to whom did such vessel belong? Was the capturing vessel a ship-of-war, a letter of marque and reprisal, or privateer, and of what force?

6. Had the capturing vessel or vessels any commission to act in the seizure or capture of the vessel inquired about, and from whom, and by what particular vessel was the capture made? Was the vessel seized condemned, and if so, when and where, and for what reason, and upon what account, and by whom, and by what authority or tribunal was she condemned?

7. What was the name of the vessel taken, and of her master or commander? Who appointed him to the command of the said vessel, and where? How long have you known the vessel and him, and when and where did he take possession of her, and who by name delivered the same to him? Where is the fixed place of abode of the master, with his wife and family, and how long has he lived there? If he has no fixed place of abode, where was his last place of residence, and how long did he live there? Where was he born? Of what country or state is he a subject or citizen?

8. Of what tonnage or burden is the vessel which has been taken, and about which you are examined? What number of the vessel's company belonged to her at the time she was seized and taken, and how many were then actually on board her? What countrymen are they? Did they all come on board at the same port and time, or at different ports and times, and when and where? Who shipped or hired them, and when or where?

9. Did you belong to the company of the vessel so captured at the time of her seizure, and in what capacity? Had you, or any of the officers, or mariners, or company, belonging to the said vessel at the time of her capture, any part, share, or interest in the same, or in the goods or merchandise laden on board her, and what in particular, and what was the value thereof at the time the said vessel was captured, and the said goods seized?

10. How long have you known the said vessel? When and where did you first see her? How many guns did she carry? How many men were on board of her at the beginning of the

engagement, before she was captured? Of what country build was she? What was her name, and how long was she so called? Whether do you know of any other name she was called by, and what were such names, as you know or have heard?

11. To what ports and places was the vessel, concerning which you are now examined, bound on the voyage wherein she was taken and seized? Where did the voyage begin, and where was the voyage to have ended? What sort of lading did she carry at the time of her first setting out on the voyage, and what particular sort of lading and goods had she on board at the time she was taken and seized? In what year and in what month was the same put on board? Do you or not know she had on board during her last voyage, and when, goods contraband of war, or otherwise prohibited by law, and what goods?

12. Had the vessel of which you are examined any passport or sea-brief on board, and from whom? To what ports or places did she sail during her last voyage, before she was taken? Where did her last voyage begin, and where was it to have ended? Set forth the kind of cargoes the vessel has carried to the time of her capture, and at what ports such cargoes have been delivered. From what ports, and at what time, particularly from the last clearing port, did the said vessel sail, previously to the capture?

13. What lading did the vessel carry at the time of her first setting sail in her last voyage, and what particular sort of lading and goods had she on board at the time she was taken? In what year and in what month was the same put on board? Set forth the different species of the lading and the quantities of each sort.

14. Who were the owners of the vessel and goods, concerning which you are now examined, at the time of their capture and seizure? How do you know they were owners thereof at that time? Of what nation or country are they by birth, and where do they live with their wives and families? How long have they resided there? Where did they reside previously, to the best of your knowledge? Of what country or state are they subjects or citizens?

15. Was any bill of sale given, and by whom, to the owners

of the said vessel, and in what month and year? Where, and in presence of what witnesses, was it made? Was any, and what engagement entered into concerning the purchase, further than what appears upon the bill of sale? Where did you last see it, and what has become of it?

16. In what port or place, and in what month and year, was the lading found on board the vessel, at the time of her capture or seizure, first put on board her? What were the names of the respective laders or owners, or consignees thereof? What countrymen are they? Where did they reside before, to the best of your knowledge, and where were the said goods to be delivered, and for whose real account, risk, or benefit? Have any of the said laders or consignees any and what interest in the said goods? What were the several qualities, quantities, and particulars of the said goods, and have you any and what reason to know or fully believe that if the said goods shall be restored and unladen at the destined ports, they did, do, and will belong to the same persons, and to none others.

17. How many bills of lading were signed for the goods seized on board the said vessel? Were any of those bills of lading false or colorable, or were any bills of lading signed which were different in any respect from those which were on board the vessel at the time she was taken? What were the contents of such other bills of lading, and what became of them?

18. Have you in your possession, or were there on board of the said vessel, at the time of her capture, any bills of lading, invoices, letters, or other writings, to prove or show your own interest, or the interest of any other person, and of whom, in the vessel or in the goods concerning which you are now examined? If in your power produce the same, and set forth the particular times when, where, and in what manner, and upon what consideration, you became possessed thereof. If you cannot produce such paper evidences, then state in whose possession you last saw them, or where you know or believe they are kept, and when, and by whom they were brought or sent within this district, and also set forth the contents or purport of such papers.

19. State the degrees of latitude and longitude in which the said vessel and her cargo were captured, as also the year,

month, and day, and time thereof, in which such seizure was made, and in or near what port or place, and whether it was a port of any State or Territory of the United States of America, and what one. Was any charter-party for the voyage upon which the said vessel was captured signed and executed, and by whom and when? If in your possession, produce the same. If not, set forth its contents and state what has become of it.

20. What papers, bills of lading, letters, or other writings relating to the vessel or cargo, were on board the vessel at the time she took her departure from her last clearing port, before she was taken as prize? Were any of them burnt, torn, thrown overboard, destroyed, or cancelled, or attempted to be concealed, and when, and by whom, and who was then present?

21. Did you or the owner, master, or person having command of the said vessel or her navigation, at the time and place of her capture, know or have notice that such place or port was in a state of war with the United States, and that the naval forces of the United States held such port in a state of blockade? How, when, or where had you such knowledge or notice, and when and where did the master or commandant of said vessel obtain it?

22. Was such port under an order of blockade by the government of the United States, at the time the said vessel entered or made an attempt to enter the same? Had warning or notice of such blockade been given to, or received by the, owner, master or commandant of said vessel, before or at the time she entered, or attempted to enter the said port, and when, and in what manner? Had notice in writing been indorsed on the register or other ship's papers of the said vessel, and when, where, and by whom, of an existing blockade of such port, before she entered, or attempted to enter the same, or before the time of her sailing, or attempting to sail therefrom?

23. Was the register of the vessel, about which you are examined, shown to, or examined by any officer of the United States navy, or by any revenue officer of the United States, before she was captured and taken, and before she entered the port at, or near which, she was taken and seized, and was the register, or other ship's papers, indorsed by said United States officer? Declare fully all you know, or have reason to

believe, respecting this interrogatory, stating the persons, times, and places connected therewith.

24. Do you know, or do you believe from information, and if the latter, from what information, and when and how was it obtained, that the vessel inquired about, at any time or times, after the blockade of the said port, and with notice thereof, and when, attempted covertly and secretly to enter the said blockaded port, or to sail therefrom, without success? Disclose fully all your knowledge, information, and belief thereon, with the particulars upon which the same is founded.

25. Has the vessel, concerning which you are now examined, been at any time, and when, seized as prize and condemned as such? If yea, set forth into what port she was carried, and by whom, and by what authority, or on what account she was condemned.

26. Have you sustained any loss by the seizing and taking the vessel concerning which you are now examined? If yea, in what manner do you compute such your loss? Have you already received any indemnity, satisfaction, or promise of satisfaction, for any part of the damage which you have sustained, or may sustain, by this capture and detention, and when and from whom?

27. Is the said vessel or goods, or any, and what parts, insured? If yea, for what voyage is such insurance made, and at what premium, and when and by what persons, and in what country was such insurance made?

28. In case you had arrived at your destined port, would your cargo, or any part thereof, on being unladen, have immediately become the property of the consignees, or any person, and whom? Or was the lader to take the chance of the market for the sale of his goods?

29. Let each witness be interrogated of the growth, produce, and manufacture, on board the vessel. Of what country and place was the lading, concerning which they are now interrogated, or any part thereof?

30. Whether all the said cargo, or any and what part thereof, was taken from the shore, or quay, or removed, or transhipped from one vessel to another, from what and to what shore, quay, and vessel, and when and where was the same so done?

31. Are there in any country besides the United States, and where, or on board any and what vessel, or vessels, other than the vessel concerning which you are now examined, any bills of lading, invoices, letters, instruments, papers, or documents, relative to the said vessel or cargo, and of what nature are they, and what are their contents?

32. Were any papers delivered out of the said vessel, and carried away in any manner whatsoever, and when, and by whom, and to whom, and in whose custody, possession, or power do you believe the same now are?

33. Was bulk broken during the voyage on which you were taken, or since the capture of the said vessel, and when, and where, by whom, and by whose orders, and for what purpose, and in what manner?

34. Were any passengers on board the aforesaid vessel? Were any of them secreted at the time of the capture? Who were the passengers by name? Of what nation, rank, profession, or occupation? Had they any commission—for what purpose, and from whom? From what place were they taken on board, and when? To what place were they finally destined, and upon what business? Had any, and which of the passengers, any and what property, or concern, or authority, directly or indirectly, regarding the vessel and cargo? Were there any officers, soldiers, or mariners secreted on board, and for what reason were they secreted? Were any citizens of the United States on board, or secreted or confined at the time of the capture? How long, and why? Whether any persons on board the said vessel, at the time of her capture, were citizens or residents of any State or Territory of the United States then in a state of war or rebellion against the United States, its government and laws. If so, who by name, and of what State or Territory? What was their employment on board the vessel, and what their destination?

35. Were and are all the passports, sea-briefs, charter-parties, bills of sale, invoices, and papers which were found on board, entirely true and fair, or are any of them false or colorable? Do you know of any matter or circumstance to affect their credit? By whom were the passports or sea-briefs obtained, and from whom? Were they obtained for this vessel only, and upon the oath or affirmation of the persons therein de-

scribed, or were they delivered to or on behalf of the person or persons who appear to have been sworn or to have affirmed thereto without their having ever, in fact, made any such oath or affirmation? How long a time were they to last? Was any duty or fee payable and paid for the same, and is there any duty or fee to be paid on the renewal thereof? Have such passports been renewed, and how often, and has the duty or fee been paid for such renewal? Was the vessel in a port in the country where the passports and sea-briefs were granted; and if not, where was the vessel at the time? Had any person on board any passport, license, or letters of safe conduct? If yea, from whom, and for what business? If it should appear that there are in the United States, or in any other place or country besides the United States, any bills of lading, invoices, instruments, or papers relative to the vessel and goods concerning which you are now examined, state how they were brought into such place or country. In whose possession are they, and do they differ from any of the papers on board, or in the United States, or elsewhere, and in what particular do they differ? Have you written or signed any letters or papers concerning the vessel and her cargo? What was their purport? To whom were they written and sent, and what has become of them?

36. Towards what port or place was the vessel steering her course at the time of her being first pursued and taken? Was her course altered upon the appearance of the vessel by which she was taken? Was her course at all times, when the weather would permit, directed to the place or port for which she appears to have been destined by the ship papers? Was the vessel, before or at the time of her capture, sailing beyond or wide of the said place or port to which she was so destined by the said ship papers? At what distance was she therefrom? Was her course altered at any, and what time, and to what other port or place, and for what reason?

37. By whom and to whom hath the said vessel been sold or transferred, and how often? At what time and at what place, and for what sum or consideration, has the same been paid or satisfied? Was the sum paid, or to be paid, a fair and true equivalent, or what security or securities have been given for the payment of the same; and by whom, and where do they

now live? Do you know, or believe in your conscience, such sale or transfer has been truly made, and not for the purpose of covering or concealing the real property. Do you verily believe that if the vessel should be restored, she will belong to the persons now asserted to be the owners, and to none others?

38. What guns were mounted on board the vessel, and what arms and ammunition were belonging to her? Why was she so armed? Were there on board any other guns, weapons, warlike arms, or armament of any name or description, and if any, what? Were there any parts of warlike arms, not put together or finished, or any ammunition, fixed or unfixed, or any balls, shells, rockets, hand-grenades, flints, percussion caps, or any other thing known to be intended for military equipment? Were there any belts, ball-moulds, saltpetre, nitre, camp equipage, military tools, uniforms, soldiers' clothing, or accoutrements, or any parts of them, or any sort of warlike or naval stores? Were any of such warlike or naval stores, or things, thrown overboard to prevent suspicion at the time of the capture; and were any such warlike stores, before described, concealed on board under the name of merchandise, or any colorable appellation, in the ship papers? If so, what are the marks on the casks, bales and packages in which they were concealed? Are any of the before-named articles, and which, for the sole use of any fortress or garrison in the port or place to which such vessel was destined? Do you know, or have you heard of any ordinance, placard, or law, existing in such country or State forbidding the exportation of the same by private persons without license? Were such warlike or naval stores put on board by any public authority? When and where were they put on board?

39. What is the whole which you know or believe, according to the best of your knowledge and belief, regarding the real and true property and destination of the vessel and cargo concerning which you are now examined, at the time of the capture?

40. Did the said vessel, on the voyage in which she was captured, (or on) or during any or what former voyage or voyages, sail under the convoy of any ship or ships of war, or other armed vessel or vessels? For what reason or purpose

did she sail under such convoy? Of what force was or were such convoying ship or ships, and to what State or country did the same belong? What instructions or directions had you or did you receive on each and every of such voyages, when under convoy, respecting your sailing or keeping in company with such armed or convoying ship or ships; and from whom did you receive such instructions or directions? Had you any, and what directions or instructions, and from whom, for resisting, or endeavoring to avoid or escape from capture, or for destroying, concealing, or refusing to deliver up your vessel's documents and papers; or any, and what other papers, that might be or were put on board your said ship? If so, state the tenor of such instructions and all particulars relating thereto. Are you in possession of such instructions, or copies thereof? If so, leave them with the commissioner, to be annexed to your deposition.

41. Did the said vessel, during the voyage in which she was captured, or on making any and what former voyage or voyages, sail to, or attempt to enter, any port under blockade by the arms or forces of any, and what, belligerent power? If so, when did you first learn or hear of such port being so blockaded, and were you at any, and what time, and by whom warned not to proceed to, or to attempt to enter into, or to escape from, such blockaded port? What conversation or other communication passed thereon? And what course did you pursue upon and after being so warned off?

42. Whether or no the vessel, concerning which you are examined, did sail on her last voyage prior to her seizure, carrying a commission or license as a privateer, or letter of marque and reprisal, or other authority from any person or persons, to cruise against the persons or property of citizens of the United States, and to make prizes thereof. By whom was such authority, license, or direction given, and when? Was it in writing? If so, did it remain with the vessel up to the time of her capture, or was it destroyed or concealed previous thereto? When, and by whom? What were the contents or purport thereof? State all the facts in your knowledge within this inquiry, and the sources of such knowledge. Also state fully all the acts known to you to have been done by the vessel, her

master or crew, under such commission or license, up to the period of her capture.

43. Whether or no the said vessel inquired about, at any time, and when and where, sailed or acted in company or concert with any other armed vessel or vessels, and what, in cruising against, pursuing, or seizing as prize, any persons, vessels, or property of citizens of the United States? Declare fully and particularly your knowledge, information and belief therein.

VIII.

R U L E S.

EASTERN DISTRICT OF NEW YORK.

CIRCUIT COURT.

JUDGES AND OFFICERS
OF THE
CIRCUIT COURT OF THE UNITED STATES
FOR THE
EASTERN DISTRICT OF NEW YORK.

SAMUEL BLATCHFORD—Associate Justice of the Supreme Court of the United States assigned to the Second Judicial Circuit—Circuit Justice.

No. 1432 K Street, N. W., Washington, D. C.

WILLIAM J. WALLACE—Circuit Judge.
Syracuse, N. Y.

ASA W. TENNEY—United States Attorney.
Brooklyn, Kings Co., N. Y.

United States Attorney's Office, No. 168 Montague Street, Brooklyn, Kings Co., N. Y.

BENJAMIN LINCOLN BENEDICT—Clerk Circuit Court.
Brooklyn, Kings Co., N. Y.

Clerk's Office at No. 168 Montague Street, Brooklyn, Kings Co., N. Y.

AUGUSTUS C. TATE—United States Marshal.
No. 105 St. Felix Street, Brooklyn, Kings Co., N. Y.

Marshal's Office at No. 170 Montague Street, Brooklyn, Kings Co., N. Y.
Court Rooms at Nos. 168, 170 Montague Street, Brooklyn, Kings Co., N. Y.

Circuit Court held at the Court Rooms in the City of Brooklyn, N. Y., on the 1st Wednesday in every month.

For FEDERAL STATUTES especially relating to this Court, see

Respecting the PRACTICE in the CIRCUIT COURTS generally, and their power to make RULES, etc., pp. 353 to 355.

Respecting FEES, etc., pp. 357 to 372.

Respecting the JURISDICTION of this Court, p. 375.

Respecting SESSIONS, etc., pp. 377 and 386.

RULES
OF THE
CIRCUIT COURT OF THE UNITED STATES
FOR THE
EASTERN DISTRICT OF NEW YORK
IN
CASES AT LAW.

Rule 1.

Proctors of any circuit or district court of the United States, attorneys of the Supreme Court of the State of New York, may on motion in open court, or on presentation of their licenses to the clerk in vacation, be admitted attorneys and proctors of this court, and counsellors and advocates of any circuit or district court, and counsellors of the said Supreme Court may in like manner be admitted counsellors and advocates of this court of course; on taking, and subscribing the oath or affirmation prescribed by the act of Congress.

Rule 2.

All notices shall be in writing, and shall be served on the attorney in the cause. Where a party, who is also an attorney of this court, shall prosecute or defend in person, all notices and other papers shall be served on him in like manner, except where the proceeding is by bill, in which case the same shall be personally served; and where the object is to bring a party into contempt for disobeying any rule or order of court, the service shall be personal, unless otherwise ordered by the court.

Rule 3.

Notices and papers may be served on an attorney during his absence from his office, by leaving the same with his clerk in such office, or with a person having charge thereof; or where no person is to be found in the office, by leaving the same between the hours of six in the morning and six in the evening in some suitable and conspicuous place in such office, or if the office be not open so as to admit of service therein, then by leaving the same at the residence of the attorney with some person of suitable age and discretion.

Rule 4.

Where a party, other than an attorney of this court, prosecutes or defends in person, the service of notices and papers may be on such party personally, or by putting the same into the post-office, directed to him at his place of residence. And no service of notices or papers in the ordinary proceedings in a cause shall be necessary to be made on a defendant, who has not appeared therein, except where he is returned imprisoned for want of bail, in which case a copy of the declaration and notice to plead shall be delivered to him, or to the marshal or jailer in whose custody he may be, and, where an exception is entered to bail, and no notice of retainer of attorney to defend is given, notice of such exception shall be delivered to the marshal or one of his deputies.

Rule 5.

All process must be signed and sealed by the clerk, and must have the name of the attorney or person by whom issued, with his place of business endorsed thereon, and the same may be tested on any day, and (except where bail is to be charged), made returnable on any other day in term or vacation, Sundays and legal holidays excepted.

Rule 6.

Where the real name of a party is not known, the process may be issued against him by a fictitious name, and when served on the real party intended, it may, by an order of course, be amended, before or after return, by inserting therein

the real name of the party, and by correcting any error in the names of the parties thereto.

Rule 7.

All actions brought for the recovery of any debt, or for damages, wherein the defendant is not required to give bail, may be commenced by the issuing and service of a monition, or by summons if the defendant be a corporation.

Rule 8.

Upon the service of such monition or summons, the defendant may endorse his appearance thereon, or, if he refuse so to do, the marshal or officer serving the same may leave a copy thereof with him, and thereupon return the same *personally* served; and in either case the clerk, upon filing such process, shall enter the defendant's appearance in the action, and such proceedings may thereupon be had as if the defendant had actually appeared, and thereupon, upon filing the declaration, or, if the same has been already filed, an order may be entered requiring the defendant to plead thereto within twenty days, or that his default be entered.

Rule 9.

The defendant may be held to bail in all actions where the same may be allowed by any act of Congress, or, where by the laws of this State an "order of arrest" may be granted. The process upon which he may be so held to bail shall be the usual *capias ad respondendum*, wherein must be stated the true cause of action, and upon which (except where otherwise provided by act of Congress), must be endorsed an order of the Judge allowing the same, and fixing the amount of bail required. To obtain such order an affidavit must be made of the facts entitling the plaintiff thereto, and which, after presentment thereof to the Judge, shall be filed with the clerk.

Rule 10.

In suits brought against persons accountable for public money, for the recovery thereof, in which the defendant is held to bail, it shall be the duty of the officer making the ar-

rest to exact a bail-bond conditioned for the appearance of the defendant on the return day of the writ, and unless it shall be made to appear that the plaintiff is not entitled by law to judgment at the return term, special bail shall be put in, and the bail, if excepted to, shall justify within two days after the return day of the writ, and before the adjournment of the court at the return term, otherwise, the plaintiff may sue out process upon the bail-bond, returnable on any day in the ensuing vacation, and upon the return of such process served, may proceed to judgment and execution as of the preceding term, unless the defendant shall interpose a valid plea verified by affidavit; and judgment may also be entered in the principal suit in the same manner as if special bail had been put in and perfected. But if, within the time allowed for putting in and perfecting special bail, the defendant shall, by making the oath or affirmation prescribed by law, entitle himself to a continuance until the next term, he shall have the same time allowed as is allowed in other cases after the return day of the writ, to put in and perfect such bail.

Rule 11.

In suits upon bonds for the payment of duties, and in suits brought against persons accountable for public money, for the recovery thereof, the declaration may be filed on the day upon which the writ is returnable and the same is actually returned, and the District Attorney may thereupon move in open court for judgment, and, no plea being interposed, may have final judgment entered *instantanter*.

Rule 12.

When, in suits upon bonds for the payment of duties, and in suits brought against persons accountable for public money, for the recovery thereof, the defendant interposes a plea, the District Attorney may have the cause placed on the calendar at the same term without other notice, and may bring the same to trial when called, unless the court shall continue the cause over at the instance of the defendant.

Rule 13.

In suits in which the United States are plaintiffs, or in which

they are interested, though not plaintiffs, if the bail to the arrest becomes special bail, the assignment of the bail-bond and the acceptance thereof by the plaintiff's attorney, shall not preclude him from excepting to the sufficiency of such special bail; and the marshal shall still be responsible for good bail, notwithstanding such assignment and acceptance of the bail-bond.

Rule 14.

No plea shall be received in any suit instituted in this court upon a bond executed to the United States for the payment of duties, or in any suit instituted upon a bail-bond taken in consequence of such suit, unless such plea shall be accompanied by an affidavit of the truth of the matters therein contained.

Rule 15.

The time for putting in special bail and giving notice thereof in other cases shall be ten days from the day on which the process shall be returnable; the time for exception and notice thereof, four days from the day of notice of bail; the time of justification, four days from the day of notice of exception, and notice of justification shall be given four days before the day of justification. Bail may justify in open court or before the Judge at chambers, or before the clerk or a commissioner of the court, with the right of appeal in the last case to the court or Judge at chambers, and, in all cases when the bail demanded exceeds five thousand dollars, two or more bail may justify for proportionate parts of such sum as the Judge may deem proper.

Rule 16.

In cases where special bail is required, the bail piece shall be duly acknowledged so as to entitle the same to be read in evidence, and be filed in the clerk's office. Notice thereof in writing shall be given to the plaintiff, or his attorney, within ten days after the return day of the process, and, in default thereof, the plaintiff may take an assignment of, and proceed upon, the bail-bond, or, against the marshal or officer who served the process.

Rule 17.

If the plaintiff elects to proceed against the marshal or

officer who served the process, it shall be by filing an affidavit, stating that the process was delivered to him for service, that the same has been returned served, and that default has been made in putting in special bail, and thereupon the clerk shall enter in the minutes of the court an order requiring the marshal or other officer to put in and perfect special bail within ten days after service of a certified copy of such order, or show cause why an attachment should not issue.

Rule 18.

If the plaintiff elects to take an assignment of the bail-bond, and shall commence a suit thereon, the same shall be stayed upon the following terms: 1st.—Putting in and perfecting special bail, and paying the costs of the suit upon the bail-bond, and of the motion for relief. 2d.—Pleading issuably, and consenting to place the cause on the calendar, and to proceed to trial at the same term, or to the entry of a judgment upon the bail-bond to stand as security to abide the event of the suit.

Rule 19.

To effect a surrender of bail, the bail or principal shall produce to the Judge two certified copies of the bail piece, on one of which the Judge shall endorse a committitur, and on the other an order that the plaintiff show cause before him on such day as he may designate, why the bail should not be exonerated.

Rule 20.

On due proof of the service of such order on the plaintiff or his attorney, and on proof by the certificate of the marshal or his deputy to whose custody the defendant has been committed, in virtue of such committitur, acknowledged before the Judge by such officer, or proved by the oath of a subscribing witness thereto, if no sufficient cause to the contrary be shown, the Judge will endorse an order on the second certified copy of the bail piece, that an exoneretur be entered. If the plaintiff or his attorney upon whom the rule to show cause is served, resides at the time of service more than one hundred miles from the place at which the cause is to be shown, such rule shall be

served eight days before the time specified therein for showing cause; in other cases four days shall be sufficient.

Rule 21.

Such certified copy shall be filed, and the clerk shall endorse thereon an exoneration, and shall also enter in the register of bail the discharge of the bail.

Rule 22.

Whenever a bail-bond shall be taken on the arrest of a defendant, the bail therein may surrender their principal, or he may surrender himself in exoneration of the bail, in the same manner, and with the like effect, as in the case of special bail, except that true copies of the bail-bond, proved to be such by the affidavit of the marshal or his deputy, or of a subscribing witness, shall be used instead of certified copies of the bail piece.

Rule 23.

In case a defendant who has procured special bail in a suit in this court shall be afterwards arrested in any other district, and committed to a jail, the use whereof has been ceded to the United States for the custody of prisoners, he may be surrendered at the request of his bail, and in pursuance of the act of Congress (in such case made and provided), in the manner provided in the foregoing rules for ordinary cases.

Rule 24.

Bail sued upon their recognizances shall have ten days after the return of the process against them, to surrender their principal, but where a surrender is made after process has been issued and served, the bail shall pay the costs of the suit against them, as a condition of discontinuance.

Rule 25.

No common rule shall be entered by the attorney, but all orders to which a party may be entitled, shall be entered by the clerk in the minutes of the court. Those orders to which a party is entitled of course, may be entered by the clerk with-

out an allowance thereof, but all other orders must be allowed by the Judge before entry.

Rule 26.

The defendant having perfected his appearance may, at any time thereafter, give notice to the plaintiff to declare in twenty days after service thereof, or that judgment of discontinuance be entered against him.

Rule 27.

The notice to plead, to answer, or to join in demurrer shall be twenty days, but the plaintiff shall not be held to accept a plea in abatement after four days from the day of service of the notice and a copy of the declaration, and the notice to join in demurrer to such plea shall be a rule of four days only.

Rule 28.

When there shall have been judgment of *respondeas ouster*, on a demurrer to a plea in abatement, and the plaintiff shall have served the defendant with a notice of such judgment, the defendant shall plead within four days from the day of service of such notice, or his default in not pleading may be entered.

Rule 29.

The party in whose favor a default has been entered may, on any day afterwards, enter such judgment as he may be entitled to by reason of such default. In all actions sounding in damages, after judgment for the plaintiff by default, or on demurrer, the damages shall be assessed on a writ of inquiry, or by the clerk, as the case may be.

Rule 30.

Four days' notice of trial and of argument, and two days' notice of countermand shall be given in all cases. The like notice of assessment and of inquiry shall also be given, at any time after default entered, and for any day in the term or vacation; but no notice of assessment or of inquiry shall be required, except when the defendant shall have appeared by attorney, or shall have given notice of his intention to appear

and defend the action, and all other notices, not otherwise provided for, shall be notices of two days.

Rule 31.

Where notice of retainer shall be received before the defendant's default in not pleading has been entered, a copy of the declaration and notice of the rule to plead (unless they shall have been served on the defendant personally), shall be served on the attorney retained, and the rule to plead shall be from the time of such service, and the service of all other pleadings, papers and notices, to be made after notice of retainer, shall be on the attorney retained.

Rule 32.

If the plaintiff shall make default in declaring, then the defendant, or if either party shall make default in answering, then the opposite party, may have the default entered by the clerk in the minutes of the court; but where the previous service of a notice, copy of a pleading, or of any other matter, shall be requisite, the default shall not be entered, unless an affidavit of such service shall be filed, neither shall it be entered until special bail, if required, is put in, and, if excepted to, has justified.

Rule 33.

The defendant's default being duly entered, the plaintiff shall not be bound afterwards to accept a plea, unless the defendant, as soon as he shall know that the default has been entered, shall file an affidavit of merits, and serve a copy, pay or tender the amount of the costs of default, plead issuably and consent to go to trial at the next term.

Rule 34.

The plaintiff may, at any time before the default for not replying shall be entered, if the plea shall be a special plea, or a plea in abatement, or within ten days after service of a copy of the plea, if it shall be the general issue, amend his declaration. After plea either party may, before default for not answering shall be entered, amend the pleading to be answered; and where there shall be demurrer to a declaration or other

pleading, such pleading may be amended at any time before the default for not joining in demurrer shall be entered.

The respective parties may amend under this rule of course, and without costs, but shall not be entitled so to amend more than once. This rule shall be construed to allow amendments to be made by adding new counts or pleas, but not so as to allow of any amendment to a plea in abatement.

Rule 35.

In order so to amend, a copy of the amended pleading shall be filed, and an order to amend entered by the clerk, and the notice to plead or answer shall be from the day of the service of a copy of the pleading as amended and on file.

Rule 36.

If the defendant shall plead the general issue, the cause shall be at issue unless the plaintiff shall, within ten days thereafter, amend his declaration; and, if either party shall, in pleading in any degree after the plea, tender an issue to the country, and, if the opposite party shall not demur to the pleading within ten days after service of a copy thereof, the cause shall, in each of these cases, be deemed at issue.

Rule 37.

Applications made by a party, in pursuance of the fifteenth section of the Judiciary Act, to require the opposite party to produce books and writings, must be made upon petition verified by affidavit, setting forth plainly the facts and circumstances upon which the application is founded, and in such petition, or in the affidavit thereunto subjoined, it must be stated that the books or writings, the production whereof is sought, are not in the possession or under the control of the petitioner, and that he is advised by his counsel, and verily believes, that the production of the books or writings, mentioned in such petition, is necessary to enable him safely to proceed in the prosecution or defence (as the case may be), of his suit.

Rule 38.

The petition may be presented to the Judge of this court in

vacation, as well as to the court in term, and the order to be made thereon shall be, that the party against whom the application is made, shall produce the books or writings mentioned in the petition, or show cause on the day and at the place to be therein specified, why the prayer of such petition should not be granted.

Rule 39.

A copy of such petition, together with a copy of the order made thereon, shall be served upon the party against whom the order is directed, a reasonable time, to be prescribed in the order, before the day therein named for showing cause.

Rule 40.

The order for discovery shall also specify the manner in which such books or writing shall be produced, and may require the party either to produce and deposit the same with the clerk of this court, or at such other place as the Judge shall direct, or to deliver to the petitioner or his attorney, copies thereof duly verified by oath.

Rule 41.

Commissions to take the examination of witnesses resident without the district, or more than a hundred miles from the place of trial, may issue by order of the court in term, or of the Judge thereof in vacation, in the manner and subject to the regulations prescribed by the Supreme Court of the State of New York. The name, residence, and occupation of each witness must be stated in the commission, unless the Judge, upon a proper application, shall otherwise order.

Rule 42.

When a cause is noticed for trial or argument, a notice thereof, with a note of the issue and of the pleadings and the attorney's name, shall be delivered on or before the Monday preceding the term, to the clerk, who shall, as early as the following day, have the calendar of causes to be tried and argued, properly made up, arranging them according to the dates of their issues, and separating those for trial from those for argu-

ment, and no cause shall be put upon the calendar without the special order of the court, unless the note of issue shall be furnished as hereby required.

Rule 43.

Whenever it shall be intended to move to set aside a verdict, except for irregularity, a case shall be prepared by the party intending to make the motion, and a copy thereof shall be served within ten days after the trial, on the opposite party, who may, within ten days thereafter, prepare amendments thereto, and serve a copy on the party who prepared the case, who may then, within four days thereafter, serve the opposite party with notice to appear within a convenient time before the Judge to have the case and amendments settled. The Judge shall thereupon correct and settle the case as he shall deem to consist with the facts. The time for settling the case must be specified in the notice, and shall be not less than four, nor more than twenty, days after service of such notice.

Rule 44.

If the party omit to make a case within the time above limited, he shall be deemed to have waived his right thereto, and when a case is made, and the parties shall omit, within the several times above limited, the one party to propose amendments, and the other to notify an appearance before the Judge, they shall respectively be deemed, the former to have agreed to the case as prepared, and the latter to have agreed to the amendments as proposed. If judgment has been rendered upon a verdict, the party intending to move for a new trial shall give four days' notice in writing to the opposite party of any motion to stay execution thereon, and also of the petition intended to be filed pursuant to the 18th Section of the Act of September 24th, 1789, unless a shorter time be allowed by the court or the Judge.

Rule 45.

General verdicts may be taken subject to the opinion of the court, on a case to be made by the party in whose favor the verdict is taken, containing all the evidence given at the trial. Such case shall be prepared and settled in the manner pre-

scribed in the foregoing rules, and may reserve the right to either party to turn the same into a bill of exceptions, and with liberty to the court to enter a verdict for the defendants.

Rule 46.

In cases of exceptions taken, demurrer to evidence, or special verdict, the party shall not, at the trial, be required to prepare his bill of exceptions, demurrer, statement of evidence, or special case, or to put in form the special verdict, but shall merely reduce such exceptions to writing, or make a minute of the demurrer to the evidence, and of the facts found specially by the jury, as the case may happen to be, and deliver it to the Judge, or the Judge himself will note the points as he may direct, and the bill, demurrer, or special verdict, shall afterwards be drawn up, amended and settled, within such times, and under the same regulations, as are made with respect to cases.

Rule 47.

A bill of exceptions may, before judgment, be used instead of a case on motion for a new trial, and notice of such motion, together with an order to stay proceedings, and a copy of such bill of exceptions, shall operate to stay all further proceedings until the decision of the court; *Provided*, that proceedings shall not be longer stayed than if a case had been made.

Rule 48.

All questions for argument, and all motions, shall be brought before the court on motion for that purpose, and if no one shall appear to oppose, the party making the motion shall be entitled to the rule or judgment moved for, on proof of due service of the notice and papers required to be served by him.

Rule 49.

The date of issue shall be, in cases of motion in arrest of judgment, of special verdict, case reserved at the trial, motion to set aside verdict or nonsuit, bill of exceptions or demurrer to evidence, the day on which the trial took place, and in case of demurrer to pleadings, the day on which the joinder in demurrer was received.

Rule 50.

The party bringing on the argument shall, at the opening thereof, furnish the Judge with a copy of the case, demurrer to evidence, special verdict, or, where the motion is for a new trial upon newly discovered evidence, with copies of the affidavits and other papers, if any, on which the motion is founded, or, if the motion be in arrest of judgment, with copies of the pleadings, or so much thereof as may be necessary, properly folioed so as to correspond. A note of the points or questions intended to be raised by each of the respective parties shall also at the same time be furnished to the Judge and to the opposite party. If such papers shall be printed, the expenses of printing may be taxed as disbursements in the cause.

Rule 51.

Whenever an order to stay proceedings shall be granted, to enable the party to make a special motion, service of such order, with copies of the affidavits upon which it is granted, and notice of the motion, shall operate as a stay of proceedings, until the further order of the court. But, if the party shall neglect to bring on the motion to be heard according to his notice, the proceedings shall not be longer stayed, and he shall be liable to pay the costs of attending to resist the motion.

Rule 52.

No private agreement or consent between the parties, or their attorneys, in respect to the proceedings in a cause, shall be binding, unless the same shall be reduced to the form of an order by consent, and entered by the clerk in the book of minutes, or, unless the evidence thereof shall be in writing, subscribed by the party or his attorney against whom the same shall be alleged.

Rule 53.

Notices of argument shall be accompanied with copies of the case, bill of exceptions, and papers on which the argument is to be made, duly folioed to correspond with those intended for the court, and if not, the cause may be stricken from the calendar.

Rule 54.

When a party shall, before motion, offer to comply fully with the terms of the order which it is the practice of the court upon motion in like cases to make, and shall also offer to pay the costs, if any, on the same being thereupon taxed and demanded, he shall be entitled to costs from the opposite party, if the motion shall be afterwards made.

Rule 55.

In all cases where a motion shall be granted on payment of costs, or on the performance of any condition, or where the order shall require such payment or performance, the party whose duty it is to comply therewith shall have ten days for that purpose, unless otherwise directed in the order. And where, by the terms of any order, an act is directed to be done *instantly*, it shall be understood to require such act to be performed within twenty-four hours, Sundays and legal holidays excluded.

Rule 56.

Whenever the plaintiff shall have neglected to bring his cause to trial, according to the practice of the court, he may, if he have not before stipulated, tender a stipulation and offer to pay the costs to which the defendant is entitled up to that time, and if the defendant shall afterwards move for judgment, as in case of nonsuit, he shall pay costs to the plaintiff—except where the plaintiff shall, after demand, have refused to pay the costs as taxed.

Rule 57.

When on motion for judgment, as in case of nonsuit, the plaintiff shall be permitted to stipulate, he shall, within ten days thereafter, tender a stipulation to the defendant, and shall pay costs ordered to be paid thereon, and, if the stipulation be not tendered, and the costs paid within that time, the defendant, on filing an affidavit of such omission of tender and non-payment, may, after the expiration of ten days, enter judgment as in case of nonsuit.

Rule 58.

In cases where the plaintiff is a non-resident of the State, at

the commencement of the action, or shall become such during the pendency thereof, the clerk, upon filing an affidavit of the fact, may enter an order of course in the minutes of the court, that the plaintiff file security for costs within four days from notice of such order, and that all proceedings on his part be stayed until such security be filed, or such order be vacated. The security may be either by the deposit of one hundred dollars with the clerk, or by the execution and filing of a bond with sufficient security to be approved by the clerk, conditioned for the payment of the costs of suit not exceeding one hundred dollars, and until such order be complied with, the attorney in the suit shall be liable for costs not exceeding that sum.

Rule 59.

The notice to return process shall require that the same be returned within five days after service of such notice, and on filing an affidavit of the due service thereof, and of default, the clerk may enter an order in the minutes of the court that the party show cause why an attachment should not issue.

Rule 60.

The day on which any notice, order, pleading, or paper is served shall be excluded in the computation of the time for complying with the exigency thereof, and the day on which compliance therewith is required shall be included, except when the same falls upon Sunday, or upon any day set apart by the laws of this State, or of Congress, as a holiday, in which cases the party shall have the whole of the next day thereafter to comply therewith.

Rule 61.

All moneys paid into court, in causes pending therein, shall be forthwith deposited by the clerk in the name, and to the credit of the court, in such Bank or Trust Company as shall be designated for that purpose by the Judge. No moneys so deposited shall be drawn except upon the order of the Judge, signed by him, stating therein the title of the suit on account of which it is drawn, accompanying the check or draft duly signed by the clerk; the order aforesaid shall be entered of record by the clerk; any interest that may be allowed upon

such deposits shall be drawn and paid with the principal to the parties entitled to receive such principal.

Rule 62.

All sums collected or received on forfeited recognizances, and all fines imposed and collected, shall be paid into court, and be accounted for by the clerk in his account with the United States Treasury.

Rule 63.

In cases wherein the Marshal of the District is a party in interest, process against him shall be directed and delivered to the sheriff of the County of Kings, for the time being, who is hereby, in pursuance of the statute in such case made and provided, appointed to serve and execute the same.

Rule 64.

Every order to show cause why an attachment shall not issue must state the true cause or ground upon which the same is made, and require the party to appear before the Judge, in court, or at chambers, on the return day thereof, and show cause, which shall be done by affidavits, without interrogatories, and if he fails to purge himself of every default or misfeasance specified in the order to the satisfaction of the Judge, an attachment may issue, or he may be forthwith committed for contempt, or otherwise, as to the Judge may seem proper.

Rule 65.

In all cases not provided for by these rules, the rules for the time being of the District Court of the United States for this District, so far as the same may be applicable, shall regulate the practice of this court.

Rule 66.

Judgments by default may be entered immediately after such default is entered, in vacation as well as in term.

Rule 67.

Upon filing a satisfaction piece duly executed and acknowledged by the party to the action, or by the District Attorney,

on behalf of the United States, or upon a return of the execution duly endorsed by the marshal satisfied, the clerk shall cancel and satisfy the judgment of record; satisfaction may also be signed and acknowledged by the attorney of record, at any time within two years from the entry of such judgment.

Rule 68.

The marshal, his deputies, and all persons concerned in the service of any process of this court, are respectively prohibited from becoming bail upon the arrest in any suit depending in this court, and also from becoming special bail in any suit, unless for the purpose of surrendering the defendant, in which case the surrender shall be made within ten days after such special bail shall have been put in.

Rule 69.

The clerk, or in case of his absence or inability, the deputy clerk, may tax bills of costs, and sign judgment records. Costs shall be taxed upon two days' notice of taxation to the opposite party. Appeals from such taxation may be made *instantly* to the Judge, but no costs shall be allowed on such appeal.

Rule 70.

The following pleadings may be used in all civil actions at law in this court, namely, the declaration, plea, demurrer, replication; and the provisions made applicable to such or corresponding pleadings by the Revised Statutes of this State, so far as the same are not inconsistent with the laws of the United States, are adopted as rules applicable to the above-mentioned pleadings in this court.

Rule 71.

Upon payment of money into court (except with a plea of tender), the plaintiff, if he accept the same, shall be entitled to costs to be taxed, and unless the defendant pay such costs within two days after they are taxed and notice thereof, the plaintiff may take the money out of court, and proceed in the cause, and he shall be entitled to a judgment for the amount so taken out, with costs, but the execution thereon shall be endorsed, "levy the cost of suit," and when money is paid into

court, the amount shall not be struck out of the declaration or verdict, but the plaintiff shall deduct the sum from his execution.

Rule 72.

In the sale of real estate under execution, issuing out of this court, the marshal shall conform his proceedings to the directions of the law of this State, for the time being, in relation to the sale of real estate in execution, and in addition to the certificate filed with the clerk of the county where the lands sold are situated, he shall file a copy thereof with the clerk of this court.

Rule 73.

Redemption of lands sold under execution out of this court, so far as the same may be allowed by law, may be made in the same manner, and with like effect, and by the same persons as prescribed by the law of this State. And the sales by the marshal shall be made subject to such redemption.

The foregoing Rules, as amended and revised, are adopted as the rules of the Circuit Court of the United States for the Eastern District of New York, in cases at law.

Dated May 24th, 1865.

ADDITIONAL RULES.

SEPTEMBER 22d, 1877.

In actions at law a consent to a reference of the whole issue must likewise contain a provision that judgment shall not be entered, until after ten days' notice of the filing of the report of the referee, and of the judgment proposed to be entered thereon. After a reference at any time before the entry of judgment, either party may move for a new trial, upon a case or exceptions, and if such motion be denied, the decision of the motion, and the questions involved in it, may be entered on the record, as if it had been a ruling made upon a trial by the Judge without a jury, and excepted to in like manner. When a motion for a new trial is intended to be made, the Court may extend the time for entering judgment upon the application of the moving party, and may stay all other proceedings until the decision of the motion.

OCTOBER 16, 1878.

In pursuance of the provisions of section 915 of an act entitled, "An Act to revise and consolidate the statutes of the United States, in force on the first day of December, Anno Domini one thousand eight hundred and seventy-three," approved June 22d, 1874, it is ordered, that the provisions of the Act of the Legislature of the State of New York, entitled "An Act relating to Courts, officers of justice, and civil proceedings," passed June 2d, 1876, and the provisions of any Act heretofore passed by said Legislature amending said last named Act, so far as such provisions relate to a remedy by attachment against the property of a defendant, are hereby adopted by this Court, as rules of this Court, in respect to a remedy by attachment against the property of a defendant in a common law cause in this Court.

DECEMBER 11th, 1878.

Ordered, That the following rule shall take effect immediately.

The Clerk of the Court shall cause to be made up calendars, as follows :

For Appellate Causes, viz., appeals in Admiralty, Writs of Error, appeals in Equity cases, appeals in Bankruptcy and Reviews in Bankruptcy.

For Original Causes, in two divisions, viz. :

1. Equity cases (embracing pleas, demurrers, cases to be heard on pleadings and proofs, and cases to be heard on pleadings alone), and issues of law in suits at law upon the pleadings or upon special verdict.

2. Issues of fact triable by a jury, to which the United States is a party, including customs and revenue suits against collectors, and issues of fact triable by jury between private parties.

The first of each of these calendars shall be made up for the January Term of 1879, and the second for the October Term of 1879, and thereafter each shall continue to be the permanent calendar for Appellate Causes and for Original Causes, subject to the addition of new cases, until the Court shall order a new calendar to be made. The causes remaining on each calendar shall be re-numbered for every October Term.

Only one note of issue to the clerk, and one notice of trial

or hearing to the opposite party, shall be necessary for any permanent calendar. The note of issue, to be filed with the clerk not less than eight days before any term of Court, shall specify the proper date in accordance with which the causes shall be arranged and numbered upon the calendars by the clerk, as follows :

For all causes upon the Appellate calendar,—the date of filing the return in this Court ;

For pleas and demurrers in equity cases set down by order for hearing,—the date of such order ;

For pleas replied to, and cases to be heard on pleadings and proofs, and cases to be heard on pleadings alone,—the date of filing the last pleading ;

For issues at law in suits at law upon the pleadings,—the date of the issue ;

For special verdicts,—the dates thereof ;

For issues of fact triable by a jury,—the date of the issue.

When the calendars are so made, and the causes numbered, each cause shall remain thereon, and stand for trial or hearing, until it is reached and called, when it may be moved by either party. If it be passed upon the regular call—no postponement being granted by the Court—it will go to the foot of the calendar. If it be a second time thus passed, it will be marked off the calendar. It may afterwards be re-noticed, and a new note of issue filed, stating the date at which it was last passed, as of which date it may be again placed on the calendar.

Motions for a new trial, on cases or exceptions, shall not be put on any calendar, but must be made before the Judge who tried the cause, at such time and place as he may direct.

Application to have any cause on the first division of the calendar of Original Causes heard before the District Judge, may be made to such Judge at any time by either party upon notice ; and the cause will be heard at such time as he may direct.

NOVEMBER 22d, 1879.

In pursuance of the provisions of the second section of the Act of Congress of the United States, entitled "An Act making appropriations for certain judicial expenses of the Government for the fiscal year ending June 30th, 1880, and for other

purposes," approved June 30th, 1879, William H. Greene, of the City of Brooklyn, county of Kings, State of New York, is hereby appointed a commissioner to discharge the duties prescribed by that Act, in this Court, and the said Commissioner and the Clerk of this Court shall, as soon as practicable after the entry of this order, place in a box the names of seven hundred and fifty persons to serve as grand jurors and as petit jurors in this Court, each on a separate slip, each of which persons shall possess the qualifications prescribed in section 800 of the Revised Statutes of the United States, the said Clerk and the said Commissioner each placing one name in said box alternately, commencing with said Clerk, without reference to party affiliations, until the said number of seven hundred and fifty names shall have been placed therein. All jurors, grand and petit, to serve in this Court, shall be publicly drawn from the said box, and from the names so placed therein, and, at the time of the drawing of any juror, the said box shall contain the names of not less than three hundred persons so placed therein. The said Commissioner and the said Clerk shall, from time to time as may be necessary, place in said box, in manner aforesaid, the names of additional persons, or the same persons, or both, possessing said qualifications, so that the number of said names shall not, when any juror is drawn, be less than three hundred.

RULES
OF THE
CIRCUIT COURT OF THE UNITED STATES
FOR THE
EASTERN DISTRICT OF NEW YORK,
ON APPEALS AND IN EQUITY.

JUNE 7th, 1865.

It is ordered by the Court, that the RULES in EQUITY and on APPEAL of the Circuit Court of the United States for the Southern District of New York, be, and the same are hereby, adopted as the RULES in EQUITY and on APPEAL in this Court as follows:

RULES ON APPEALS.

Rule 1.

An appeal can be taken from no other than final decrees.

Rule 2.

A decree shall be deemed final, when in a state for execution without further action of the Court below.

Rule 3.

Every appeal to the Circuit Court, in a cause of Admiralty and maritime jurisdiction, shall be in writing, signed by the party, or his proctor, and delivered to the clerk of the District Court from the decree of which the appeal shall be made; and it shall be returned to the Court, with the necessary documents

and proceedings, within twenty days, and by the first day of the next term after the delivery thereof to the clerk, unless a longer time is allowed by the judge.

Rule 4.

The appeal shall briefly state the prayers, or allegations, of the parties to the suit, in the District Court, the proceedings in that Court, and the decree, with the time of rendering the same. It shall also state whether it is intended, on the appeal, to make new allegations, to pray different relief, or to seek a new decision on the facts, and the appellants shall be concluded in this behalf, by the appeal filed.

Rule 5.

A copy of the appeal shall, at the same time, be served on the proctor of the appellees in the Court below. And an affidavit of the due service of such copy shall be filed with the appeal. And no process, or order, shall be necessary to bring the appellees into this Court.

Rule 6.

If, in the appeal, it shall not be intended to make new allegations, to pray different relief, nor to seek a new decision of the facts, then the pleadings, evidence, and decree, in the District Court, where the stipulations in the cause, and the clerk's account of the funds in Court, in the cause, if any, shall be certified to this Court with the appeal. But, in all cases, the statement of facts agreed between the parties, or settled by the judge of the District Court, and on file, according to the practice of that court, may be certified in the place of the evidence at large.

Rule 7.

If it shall be intended to seek only a new decision of the facts, then the pleadings of the parties, with the stipulations in the cause, and the clerk's account of the funds in Court, if any, and the exhibits and depositions in the cause, shall be certified to this Court with the appeal, but the proofs need not be certified, unless specially required by the appellant or ordered by this Court.

Rule 8.

If it shall be intended to make new allegations, or to seek new relief, then the return to the petition of appeal shall only contain copies of the process issued upon the libel, and of the return thereof, the account of the clerk of the funds in Court, in the cause, the depositions and exhibits, and the stipulations in the cause.

Rule 9.

The appellant shall cause the notice of appeal, and an affidavit of the service of a copy thereof, with the documents required to be returned with the appeal, to be filed in this Court within four days after the return is completed by the clerk, otherwise the appeal shall not be received, and shall be deemed deserted; and a certificate in this behalf shall be made to the Court from which the appeal is made, which may proceed to execution of its decree.

Rule 10.

This Court shall be deemed possessed of the cause from the time of filing the appeal, with the documents required to be returned therewith, in this Court.

Rule 11.

If the appellee does not enter his appearance within the two first days in term succeeding the filing the appeal and proceedings, and affidavit of service of notice thereof on him, the appellant may proceed *ex parte* in the cause, and have such decree as the nature of the case may demand.

Rule 12.

No answer, or issue, need be given to the appeal. Each party may notice the cause for hearing, for the term to which the appeal is made, (if made in term time,) or, if made in vacation, for the term next succeeding.

Rule 13.

A writ of *inhibition* will be awarded, at the instance of the appellant, when circumstances require, to stay proceedings in

the Court below, notice of such application having been previously given.

Rule 14.

A *mandamus* may, in like manner, be obtained, to compel a return of the appeal, when unreasonably delayed by the clerk, or Court below.

Rule 15.

If the appellee shall have any cause to show why new allegations or proofs shall not be offered, or new relief prayed, on the appeal, he shall give four days' notice thereof, and serve a copy of the affidavit containing the cause intended to be shown; and such cause shall be shown within the two first days of the term; otherwise, the appeal shall be allowed according to its term.

Rule 16.

If new allegations are to be made, or different relief prayed, in this Court, then the libellant in the District Court shall exhibit in this Court a libel, on oath, within ten days, to which the adverse party shall, in twenty days, answer on oath, subject, in each case, to the extension of those periods, by order of either of the judges of this Court; and, on a default in this behalf, the Court will, on motion, without notice, make such order for finally disposing of the cause, on the default of the party, as the nature of the case may require.

Rule 17.

After the libel and answer, whether newly filed in this Court, or certified from the District Court, shall be filed in this Court, the cause shall be proceeded in to a hearing, as in other cases. But, where interrogatories have been answered in the District Court, or written testimony taken, the same may be used in this Court.

Rule 18.

The appellee may move this Court to have the decree made in the District Court carried into effect, subject to the judgment of this Court, or of the Supreme Court on appeal, upon giving his own stipulation to abide and perform the decree of such Courts; and this Court will make such order, unless the

appellant shall give security, by the stipulation of himself and competent sureties, for payment of all damages and costs, on the appeal in this Court, and in the Supreme Court, in such sums as this Court shall direct.

Rule 19.

In cases where an appeal shall lie from the decree of this Court, the final decree shall not be executed until ten days shall have elapsed from the pronouncing, or filing, of the decision of the Court.

Rule 20.

When appeal shall be made from the decree of this Court, the appellant shall, within four days from the pronouncing or filing of such decision, unless further time is allowed by the judge, make, and serve on the adverse party, a statement of the testimony on the trial, excepting such evidence as was in writing, which shall be properly referred to therein. The party on whom the same shall be served shall, in four days after such service, propose amendments thereto, or the statement shall be deemed acquiesced in, and the statement and amendments, unless acquiesced in, shall be submitted by the appellant to the judge in four days afterwards for settlement; and the same, when settled, shall be engrossed by the clerk, and, with the written evidence, shall be deemed the proofs on which the decree is made, and shall operate as a stay of further proceedings in this Court.

Rule 21.

In all cases, in civil causes of Admiralty and maritime jurisdiction, not expressly provided for by the foregoing Rules of this Court, the Rules of Practice of the District Court for the Southern District of New York, being in force at the time, and whether established before or after these Rules, (not being inconsistent with these Rules,) are adopted, and are to be received as Rules of Practice in this Court.

ADDITIONAL RULES.

[The following regulations in regard to costs and fees were adopted in the Circuit and District Courts of the United States for the Southern District of New York, on the 28th of May, 1859.]

COSTS TAXABLE TO COMMISSIONERS APPOINTED AND ACTING ON REFERENCES, UNDER RULE 44 OF THE RULES OF PRACTICE FOR THE COURTS OF THE UNITED STATES IN ADMIRALTY AND MARITIME JURISDICTION, PRESCRIBED BY THE SUPREME COURT OF THE UNITED STATES AT THE JANUARY TERM, 1845, AND UNDER RULES OF PRACTICE IN ADMIRALTY, ADOPTED IN JANUARY TERM, 1839, BY THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

It being made a question of taxation, what fees or compensation may be lawfully allowed to said officers, for services rendered by them, under their appointments by authority of the above Rules of Court; and it appearing, that the Act of Congress entitled, "An Act to regulate the fees and costs to be allowed Clerks, Marshals, and Attorneys of the Circuit and District Courts of the United States, and for other purposes," approved February 26th, 1853, (10 U. S. Stat. at Large, 161,) makes no provision for compensating Commissioners appointed by the Courts under the aforesaid Rules, for their services rendered in aid of the administration of justice, in the matters and cases therein specified; and we being of opinion, that these special officers of the Court do not come strictly within the Act, and that, upon the usages and doctrines of Courts of the United States, officers called upon to render services in those Courts, according to their rules and modes of practice, for which no specific fees or costs are appointed by statute law, will be awarded compensation therefor by the Courts respectively in which the services are performed, corresponding in amount to that allowed by law in the State, for similar services rendered by State officers, in a like capacity, particularly in Chancery procedures, (1 Blatchf. C. C. R., 652; *Hathaway v. Roach*, 2 Woodb. & M., 63;) and it further appearing to us, that such is an equitable and sound rule to be applied in relation to this class of officers, especially as the above cited statute law of costs contains no prohibition of compensation

to them by authority of the Courts otherwise than through a positive appointment by statutory law: We are, therefore, of opinion, that such Commissioners are entitled to have taxed in their behalf, by the proper taxing officers, the rate of fees or costs allowable in the Court of Chancery of the State of New York to Masters in Chancery of that Court, for services therein, performed by them, on the first of September, 1845, being the time the Rule of Practice aforesaid adopted by the Supreme Court went into operation, unless in particulars in which the rate of allowance then prevailing in the State Court shall have been rescinded or modified by subsequent regulations made by orders of the Courts of the United States; and we designate as proper subjects of taxation, in cases where those services have been actually performed by such Commissioners, in Admiralty and Maritime causes referred to them pursuant to the aforesaid Rules, the following items, embraced in the Rules and Orders of the Court of Chancery of the State of New York, revised and established by Chancellor Walworth, in 1844, under the head of "Master's Fees," (pages 190, 191,) to wit:

Commissioners' Costs.

For signing every summons for a witness or party to attend a reference, *twelve cents*.

For attending at the time and place, and adjourning the same at request, or upon reasonable cause, *one dollar*.

Attendance and hearing every argument upon any matter referred to him, when litigated, *three dollars*; and when he proceeds *ex parte*, *one dollar*.

Attending and settling his report after argument, if both parties attend and litigate the same, *three dollars*; if he proceeds *ex parte*, *one dollar*.

For writing out and certifying the testimony of witnesses taken orally before him on the hearing, to file with his report, for every folio of 100 words, *twenty cents*.

Copies of the same, furnished, on request, to either party, for each folio, *ten cents*.

Drawing every report in pursuance of an order of reference to him, (exclusive of schedules and the written proofs,) for every folio, *twenty cents*.

Drawing all schedules to be annexed to reports, for every folio, *ten cents*.

Copies of reports and schedules, to be filed, for every folio, *ten cents*.

Copies of reports and schedules and all other proceedings, furnished by him to the parties, upon request, for every folio, *six cents*.

Marking every exhibit produced before him on a reference, with the title of the cause, and signing the same, *six cents*.

May 28th, 1859.

S. NELSON,
SAML. R. BETTS.

OCTOBER 15th, 1872.

On the hearing of appeals in Admiralty, the appellant shall furnish to the Court a printed copy of the Apostles, certified by the clerk of this Court, unless, by special order of the Court, obtained before the hearing, such printing, or some part thereof, shall be dispensed with. Such portion of the Apostles as may have been printed for the use of the District Judge, may be furnished without reprinting. A printed copy of whatever is printed and furnished under the rule shall be served on the proctor for the appellee at least eight days before the hearing.

NOVEMBER 21st, 1873.

Hereafter, in all cases brought to this Court, from the District Court, by writ of error, or appeal, or petition of review, the clerk of the District Court shall annex to, and transmit with the record or proceedings of that Court, a copy of any opinion or opinions filed in that Court upon the decision of any matter contained in such record or proceedings, and, if no such opinion has been filed, such clerk shall so certify; and the said opinions, or such certificate, shall be considered as filed in the case in this Court, and a copy thereof shall be transmitted with the record to the Supreme Court, in the cases provided for by the amendment to the eighth rule of that Court, promulgated April 28th, 1873.

OCTOBER 19th, 1875.

For the purpose of carrying out more efficiently the provisions of the recent act of Congress, after it shall take effect,

in regard to the finding of facts, and of conclusions of law by the Circuit Court, in cases in Admiralty, on appeal, each party to an appeal shall furnish to the Court, at the beginning of the hearing, and shall serve on the proctor for each of the other parties to the appeal, five days before the hearing, a printed finding of facts and conclusions of law, as proposed, printed on writing paper on only one side. If this be not done, the party in default will not be heard on the appeal, and, if the party in default be the appellant, his appeal will be dismissed.

DECEMBER 11th, 1878.

See Common Law Rule of the above date, printed at page 560.

Rule as to printing.

See Equity Rule, November 8th, 1881, printed at page 575.

REVIEW IN BANKRUPTCY.

JANUARY 22d, 1877.

1. Notice of an intended application to the Circuit Court for the exercise of the general superintendence and jurisdiction conferred by section 4986 of the Revised Statutes of the United States, must be given within ten days after the entry in the District Court of the order complained of, by filing such notice in the clerk's office of that Court, and serving the same on the adverse party. The application must be made within thirty days after the entry of such order, or within such further time as may be allowed by an order of the District Judge, filed within said thirty days in the clerk's office of that Court. An application cannot be made at a later period.

2. Except where special provision is otherwise made by statute, or where the aggrieved party proceeds by bill in equity, the application must be by petition, filed in the office of the clerk of the Circuit Court, and verified by oath. The petition must designate the order complained of, and set forth the facts of the case, so far as may be necessary to show the errors, whether of fact or of law, alleged to have occurred in the District Court, and must point out such errors specifically, and
..... the relief sought therefor.

3. The petitioner must, within five days after filing the peti-

tion, procure from the clerk of the Circuit Court a certificate of the filing of such petition, designating the order therein complained of, by its date, and file the same in the office of the clerk of the District Court.

4. Within ten days after filing the petition, the petitioner must serve a copy thereof on the adverse party, who may file an answer thereto, verified by oath, within ten days after such service, and must, in that case, serve a copy of the answer on the petitioner within the further period of ten days. The petitioner may, within ten days thereafter, file a reply to the answer, and serve a copy thereof on the adverse party. The clerk may once extend either of these periods, by order made before its expiration.

5. The application will be heard upon these papers only, unless the Court shall, of its own motion, otherwise direct. As soon as the case is disposed of, the clerk of the Circuit Court must certify the order to the District Court.

EQUITY RULES.

Rule 1.

No motion for an injunction (except to stay waste) shall be heard, unless a copy of the bill, and of the depositions to be offered in its support, shall be served on the adverse party, or his attorney, at least four days before motion made.

Rule 2.

The defendant may show cause against the allowance of an injunction, either by plea, answer, or demurrer to the bill, or by parol exception to its legal sufficiency, or by deposition, disproving the equity on which the motion is founded.

Rule 3.

Supplementary, or supporting, proofs may, at the discretion of the Court, or judge, be offered by the complainant, to rebut the cause shown by the defendant; but the reception of such additional proofs is not to permit the introduction of further proofs in opposition thereto, by the defendant, previous to the final hearing upon the merits.

Rule 4.

If a general commission is not issued, pursuant to the 25th Rule of the Supreme Court, within ten days after replication filed, either party may give notice of the examination of witnesses before the standing examiner of this Court; and three months from the time of the replication shall be allowed the parties for taking their depositions before the examiner.

Rule 5.

When no proceedings are taken by either party within thirty days after replication, for the examination of witnesses out of Court, either party may set the cause down for hearing upon the pleadings.

Rule 6.

Whenever it is intended to offer oral proof in open Court, the party proposing it shall give due notice to the opposite party of the names of the witnesses, the matters to which they are to be examined, and of the reasons upon which he will move for an examination.

Rule 7.

All special motions, in reference to matters of practice, may be made in open court, or before a judge at chambers.

Rule 8.

No rule, or order, need be entered for the publication of testimony; but, so soon as the commissioner or examiner shall have completed the testimony offered, the party taking it shall cause the deposition to be filed in the clerk's office, and forthwith give notice thereof to the adverse party. Either party may thereupon enter a rule, of course, that the clerk open the commission, or deposition, and file the same.

Rule 9.

Within four days after the clerk shall have prepared copies of the depositions, (provided the same were applied for in two days after the notice of the filing thereof,) the adverse party may give notice of exception, before a judge at chambers, to

the proofs or any part of them, on account of any irregularity in taking the depositions, or executing the commissions; and, if no such notice of exception is given, all objections to the form, or manner, in which the proofs were taken, shall be deemed waived.

Rule 10.

When a motion for rehearing is made during the term at which a decree has been rendered, the enrolling or recording of such decree shall be suspended, until the final disposition of such motion by the Court.

Rule 11.

A master, or examiner, in taking proofs, or in matters of reference, shall not, without the written consent of all parties, or the authorization of one of the judges, adjourn proceedings pending before him, for a longer time than ten days.

Rule 12.

APRIL 17th, 1845.

Masters and Examiners in Chancery, designated and appointed by this Court to act as such, on the Equity side thereof, shall, *ex officio*, be Commissioners to take affidavits and acknowledgments of bail, in civil causes depending in the Courts of the United States, and to take bail within the Eastern District of New York, pursuant to the provisions of the several Acts of Congress in that behalf; and every such Master in Chancery for the time being is hereby designated and appointed, *ex officio*, Commissioner as aforesaid.

Rule 13.

Hereafter, on motions for an injunction, because of the infringement of a patent right, the complainant shall not be permitted to give evidence to rebut the cause shown by the defendant against the allowance thereof, other than to a denial that the defendant uses the discovery or invention claimed by the complainant, or to a claim by the defendant that he acts under an assignment or license from the patentee; and, on motions for injunctions to stay waste, only to a defence set up justifying the waste; and, in neither case shall such suppletory or

supporting proofs be received, unless the Court, or one of the judges, on satisfactory cause shown, shall, by order previously made, allow the same to be given: and so much of Rule 3, of the standing Rules in Equity of this Court, adopted June 7th, 1865, as may be inconsistent herewith, is repealed.

Motions for injunctions shall be brought on by the complainant on the day named in the notice, if the Court is then in session, and, in default thereof, the defendant may move that the notice be discharged for the term, with costs, unless further time is given, or the hearing is delayed by order of the Court.

Rule 14.

No action, real or personal, shall abate by the death, marriage, or other disability of either party, or by the transfer of any interest therein, if the cause of action survive or continue. In case of the death, marriage, or other disability of a party, the Court, on motion, may allow the cause to be continued by or against the successor in interest, on the usual notice to the party interested, or such other notice as may be directed by the Court.

NOVEMBER 8th, 1881.

The rules of the Circuit Court for the Southern District of New York in respect to printing papers for the use of the Court, and to the service and furnishing of copies thereof, and to the allowance of the disbursements for such printing in the costs, shall be deemed to be the rules of this Court, in cases not already provided for by the rules of this Court.

IX.

R U L E S .

EASTERN DISTRICT OF NEW YORK.

DISTRICT COURT.

JUDGE AND OFFICERS
OF THE
DISTRICT COURT OF THE UNITED STATES
FOR THE
EASTERN DISTRICT OF NEW YORK.

CHARLES L. BENEDICT—District Judge.
No. 120 Pierrepont Street, Brooklyn, Kings Co., N. Y.

ASA W. TENNEY—United States Attorney.
Brooklyn, Kings Co., N. Y.

United States Attorney's Office, No. 168 Montague Street, Brooklyn,
Kings Co., N. Y.

BENJAMIN LINCOLN BENEDICT—Clerk District Court.
Brooklyn, Kings Co., N. Y.

Clerk's Office at No. 168 Montague Street, Brooklyn, Kings Co., N. Y.

AUGUSTUS C. TATE—United States Marshal.
No. 105 St. Felix Street, Brooklyn, Kings Co., N. Y.

Marshal's Office at No. 170 Montague Street, Brooklyn, Kings Co., N. Y.
Court Rooms at Nos. 168, 170 Montague Street, Brooklyn, Kings Co.,
N. Y.

District Court held at the Court Rooms in the City of Brooklyn, N. Y.,
on the first Wednesday in every month.

For FEDERAL STATUTES especially relating to this Court, See
Respecting the PRACTICE in the DISTRICT COURTS generally, their power
to make RULES, etc., pp. 353 to 355.

Respecting FEES, etc., pp. 357 to 372.

Respecting the JURISDICTION of this Court, p. 375.

Respecting SESSIONS, etc., p. 379 and p. 386.

RULES
OF THE
DISTRICT COURT OF THE UNITED STATES
FOR THE
EASTERN DISTRICT OF NEW YORK,
IN
CASES AT LAW.

Rule 1.

Proctors of any circuit or district court of the United States, attorneys of the Supreme Court of the State of New York, may on motion in open court, or on presentation of their licenses to the clerk in vacation, be admitted attorneys and proctors of this court, and counsellors and advocates of any circuit or district court, and counsellors of the said Supreme Court may, in like manner, be admitted counsellors and advocates of this court of course, on taking and subscribing the oath or affirmation prescribed by the Act of Congress.

Rule 2.

All notices shall be in writing, and shall be served on the attorney in the cause. Where a party, who is also an attorney of this court, shall prosecute or defend in person, all notices and other papers shall be served on him in like manner, except where the proceeding is by bill, in which case the same shall be personally served; and where the object is to bring a party into contempt for disobeying any rule or order of court, the service shall be personal unless otherwise ordered by the court.

Rule 3.

Notices and papers may be served on an attorney during his absence from his office, by leaving the same with his clerk in such office, or with a person having charge thereof; or where no person is to be found in the office, by leaving the same between the hours of six in the morning and six in the evening in some suitable and conspicuous place in such office, or if the office be not open so as to admit of service therein, then by leaving the same at the residence of the attorney with some person of suitable age and discretion.

Rule 4.

Where a party other than an attorney of this court prosecutes or defends in person, the service of notices and papers may be on such party personally, or by putting the same into the post-office directed to him at his place of residence. And no service of notices or papers in the ordinary proceedings in a cause shall be necessary to be made on a defendant who has not appeared therein, except where he is returned imprisoned for want of bail, in which case a copy of the declaration and notice to plead shall be delivered to him, or to the marshal or jailer in whose custody he may be; and where an exception is entered to bail, and no notice of retainer of attorney to defend is given, notice of such exception shall be delivered to the marshal, or one of his deputies.

Rule 5.

All process must be signed and sealed by the clerk, and must have the name of the attorney or person by whom issued, with his place of business endorsed thereon, and the same may be tested on any day, and, (except where bail is to be charged,) made returnable on any other day in term or vacation, Sundays and legal holidays excepted.

Rule 6.

Where the real name of a party is not known, the process may be issued against him by a fictitious name, and when served on the real party intended, it may, by an order of course, be amended before or after return by inserting therein

the real name of the party, and by correcting any error in the names of the parties thereto.

Rule 7.

All actions brought for the recovery of any debt or for damages, wherein the defendant is not required to give bail, may be commenced by the issuing and service of a monition, or by summons, if the defendant be a corporation.

Rule 8.

Upon the service of such monition or summons the defendant may endorse his appearance thereon, or, if he refuse so to do, the marshal or officer serving the same may leave a copy thereof with him, and thereupon return the same *personally* served, and in either case the clerk, upon filing such process, shall enter the defendant's appearance in the action, and such proceedings may thereupon be had, as if the defendant had actually appeared, and thereupon, upon filing the declaration, or, if the same has been already filed, an order may be entered requiring the defendant to plead thereto within twenty days or that his default be entered.

Rule 9.

The defendant may be held to bail in all actions where the same may be allowed by any act of Congress, or where, by the laws of this State, an "order of arrest" may be granted. The process upon which he may be so held to bail shall be the usual *capias ad respondendum*, wherein must be stated the true cause of action, and upon which (except where otherwise provided by act of Congress), must be endorsed an order of the Judge allowing the same and fixing the amount of bail required. To obtain such order, an affidavit must be made of the facts entitling the plaintiff thereto, and which, after presentment thereof to the Judge, shall be filed with the clerk.

Rule 10.

In suits brought against persons accountable for public money, for the recovery thereof, in which the defendant is held to bail, it shall be the duty of the officer making the

arrest to exact a bail-bond conditioned for the appearance of the defendant on the return day of the writ, and, unless it shall be made to appear that the plaintiff is not entitled by law to judgment at the return term, special bail shall be put in, and the bail, if excepted to, shall justify within two days after the return day of the writ, and before the adjournment of the court at the return term, otherwise the plaintiff may sue out process upon the bail-bond returnable on any day in the ensuing vacation, and, upon the return of such process served, may proceed to judgment and execution as of the preceding term, unless the defendant shall interpose a valid plea verified by affidavit; and judgment may also be entered in the principal suit, in the same manner as if special bail had been put in and perfected. But, if, within the time allowed for putting in and perfecting special bail, the defendant shall, by making the oath or affirmation prescribed by law, entitle himself to a continuance until the next term, he shall have the same time allowed as is allowed in other cases after the return day of the writ, to put in and perfect such bail.

Rule 11.

In suits upon bonds for the payment of duties, and in suits brought against persons accountable for public money, for the recovery thereof, the declaration may be filed on the day upon which the writ is returnable and the same is actually returned, and the district attorney may thereupon move in open court for judgment, and, no plea being interposed, may have final judgment entered *instantanter*.

Rule 12.

When in suits upon bonds for the payment of duties, and in suits brought against persons accountable for public money, for the recovery thereof, the defendant interposes a plea, the district attorney may have the cause placed on the calendar, at the same term, without other notice, and may bring the same to trial when called, unless the court shall continue the cause over at the instance of the defendant.

Rule 13.

In suits in which the United States are plaintiffs, or in which

they are interested, though not plaintiffs, if the bail to the arrest becomes special bail, the assignment of the bail-bond, and the acceptance thereof by the plaintiff's attorney, shall not preclude him from excepting to the sufficiency of such special bail; and the marshal shall still be responsible for good bail, notwithstanding such assignment and acceptance of the bail-bond.

Rule 14.

No plea shall be received in any suit instituted in this court upon a bond executed to the United States for the payment of duties, or in any suit instituted upon a bail-bond taken in consequence of such suit, unless such plea shall be accompanied by an affidavit of the truth of the matters therein contained.

Rule 15..

The time for putting in special bail and giving notice thereof in other cases shall be ten days from the day on which the process shall be returnable; the time for exception and notice thereof, four days from the day of notice of bail; the time of justification four days from the day of notice of exception, and notice of justification shall be given four days before the day of justification. Bail may justify in open court or before the Judge at chambers, or before the clerk or a commissioner of the court, with the right of appeal in the last case to the court or Judge at chambers, and in all cases when the bail demanded exceeds five thousand dollars, two or more bail may justify for proportionate parts of such sum as the Judge may deem proper.

Rule 16.

In cases where special bail is required, the bail piece shall be duly acknowledged so as to entitle the same to be read in evidence, and be filed in the clerk's office. Notice thereof in writing shall be given to the plaintiff or his attorney within ten days after the return day of the process, and in default thereof, the plaintiff may take an assignment of and proceed upon the bail-bond, or against the marshal or officer who served the process.

Rule 17.

If the plaintiff elects to proceed against the marshal or officer

who served the process, it shall be by filing an affidavit stating that the process was delivered to him for service, that the same has been returned served, and that default has been made in putting in special bail, and thereupon the clerk shall enter in the minutes of the court an order requiring the marshal or other officer to put in and perfect special bail within ten days after service of a certified copy of such order, or show cause why an attachment should not issue.

Rule 18.

If the plaintiff elects to take an assignment of the bail-bond, and shall commence a suit thereon, the same shall be stayed upon the following terms: 1st. Putting in and perfecting special bail, and paying the costs of the suit upon the bail-bond, and of the motion for relief. 2d. Pleading issuably, and consenting to place the cause on the calendar and to proceed to trial at the same term, or to the entry of a judgment upon the bail-bond to stand as security, to abide the event of the suit.

Rule 19.

To effect a surrender of bail, the bail or principal shall produce to the Judge two certified copies of the bail piece, on one of which the Judge shall endorse a committitur, and on the other an order that the plaintiff show cause before him on such day as he may designate, why the bail should not be exonerated.

Rule 20.

On due proof of the service of such order on the plaintiff or his attorney, and on proof, by the certificate of the marshal, or his deputy to whose custody the defendant has been committed in virtue of such committitur, acknowledged before the Judge by such officer, or proved by the oath of a subscribing witness thereto, if no sufficient cause to the contrary be shown, the Judge will endorse an order on the second certified copy of the bail piece that an exoneretur be entered. If the plaintiff, or his attorney upon whom the rule to show cause is served, resides at the time of service more than one hundred miles from the place at which the cause is to be shown, such rule shall be served

eight days before the time specified therein for showing cause; in other cases four days shall be sufficient.

Rule 21.

Such certified copy shall be filed, and the clerk shall endorse thereon an exoneretur, and shall also enter in the register of bail the discharge of the bail.

Rule 22.

Whenever a bail-bond shall be taken on the arrest of a defendant, the bail therein may surrender their principal, or he may surrender himself in exoneration of the bail, in the same manner and with the like effect as in the case of special bail, except that true copies of the bail-bond, proved to be such by the affidavit of the marshal or his deputy, or of a subscribing witness, shall be used instead of certified copies of the bail piece.

Rule 23.

In case a defendant who has procured special bail in a suit in this Court shall be afterwards arrested in any other district and committed to a jail, the use whereof has been ceded to the United States for the custody of prisoners, he may be surrendered at the request of his bail, and in pursuance of the act of Congress (in such case made and provided), in the manner provided in the foregoing rules for ordinary cases.

Rule 24.

Bail sued upon their recognizances, shall have ten days after the return of the process against them to surrender their principal, but where a surrender is made after process has been issued and served, the bail shall pay the costs of the suit against them, as a condition of discontinuance.

Rule 25.

No common rule shall be entered by the attorney, but all orders to which a party may be entitled shall be entered by the clerk in the minutes of the court. Those orders to which a party is entitled of course may be entered by the clerk without

an allowance thereof, but all other orders must be allowed by the Judge before entry.

Rule 26.

The defendant, having perfected his appearance, may, at any time thereafter, give notice to the plaintiff to declare in twenty days after service thereof, or that judgment of discontinuance be entered against him.

Rule 27.

The notice to plead, to answer, or to join in demurrer shall be twenty days, but the plaintiff shall not be held to accept a plea in abatement after four days from the day of service of the notice, and a copy of the declaration; and the notice to join in demurrer to such plea shall be a rule of four days only.

Rule 28.

When there shall have been judgment of *respondeas ouster*, on a demurrer to a plea in abatement, and the plaintiff shall have served the defendant with a notice of such judgment, the defendant shall plead within four days from the day of service of such notice, or his default in not pleading may be entered.

Rule 29.

The party in whose favor a default has been entered may, on any day afterwards, enter such judgment as he may be entitled to by reason of such default. In all actions sounding in damages after judgment for the plaintiff by default, or on demurrer, the damages shall be assessed on a writ of inquiry, or by the clerk, as the case may be.

Rule 30.

Four days' notice of trial and of argument, and two days' notice of countermand shall be given in all cases. The like notice of assessment and of inquiry shall also be given at any time after default entered, and for any day in the term or vacation, but no notice of assessment or of inquiry shall be required, except when the defendant shall have appeared by attorney, or shall have given notice of his intention to appear and defend the action; and all other notices not otherwise provided for shall be notices of two days.

Rule 31.

Where notice of retainer shall be received before the defendant's default in not pleading has been entered, a copy of the declaration and notice of the rule to plead (unless they shall have been served on the defendant personally), shall be served on the attorney retained, and the rule to plead shall be from the time of such service, and the service of all other pleadings, papers, and notices, to be made after notice of retainer, shall be on the attorney retained.

Rule 32.

If the plaintiff shall make default in declaring, then the defendant, or if either party shall make default in answering, then the opposite party may have the default entered by the clerk in the minutes of the court, but where the previous service of a notice, copy of a pleading, or of any other matter shall be requisite the default shall not be entered, unless an affidavit of such service shall be filed, neither shall it be entered until special bail, if required, is put in, and, if excepted to, has justified.

Rule 33.

The defendant's default being duly entered, the plaintiff shall not be bound afterwards to accept a plea, unless the defendant, as soon as he shall know that the default has been entered, shall file an affidavit of merits and serve a copy, pay or tender the amount of the costs of default, plead issuably, and consent to go to trial at the next term.

Rule 34.

The plaintiff may at any time before the default for not replying shall be entered, if the plea shall be a special plea, or a plea in abatement, or within ten days after service of a copy of the plea, if it shall be the general issue, amend his declaration. After plea, either party may, before default for not answering shall be entered, amend the pleading to be answered, and where there shall be demurrer to a declaration or other pleading, such pleading may be amended at any time before the default for not joining in demurrer shall be entered.

The respective parties may amend under this rule of course

and without costs, but shall not be entitled so to amend more than once. This rule shall be construed to allow amendments to be made by adding new counts or pleas, but not so as to allow of any amendment to a plea in abatement.

Rule 35.

In order so to amend, a copy of the amended pleading shall be filed, and an order to amend entered by the clerk, and the notice to plead or answer shall be from the day of the service of a copy of the pleading as amended and on file.

Rule 36.

If the defendant shall plead the general issue, the cause shall be at issue, unless the plaintiff shall, within ten days thereafter, amend his declaration; and if either party shall, in pleading in any degree after the plea, tender an issue to the country, and if the opposite party shall not demur to the pleading within ten days after service of a copy thereof, the cause shall, in each of these cases, be deemed at issue.

Rule 37.

Applications made by a party in pursuance of the fifteenth section of the Judiciary Act to require the opposite party to produce books and writings, must be made upon petition verified by affidavit, setting forth plainly the facts and circumstances upon which the application is founded, and in such petition, or in the affidavit thereunto subjoined, it must be stated that the books or writings, the production whereof is sought, are not in the possession or under the control of the petitioner, and that he is advised by his counsel and verily believes that the production of the books or writings mentioned in such petition, is necessary to enable him safely to proceed in the prosecution or defence (as the case may be), of his suit.

Rule 38.

The petition may be presented to the Judge of this court in vacation as well as to the court in term, and the order to be made thereon shall be that the party against whom the application is made shall produce the books or writings

mentioned in the petition, or show cause on the day and at the place to be therein specified, why the prayer of such petition should not be granted.

Rule 39.

A copy of such petition, together with a copy of the order made thereon, shall be served upon the party against whom the order is directed, a reasonable time to be prescribed in the order before the day therein named for showing cause.

Rule 40.

The order for discovery shall also specify the manner in which such books or writing shall be produced, and may require the party either to produce and deposit the same with the clerk of this court, or at such other place as the Judge shall direct, or to deliver to the petitioner or his attorney copies thereof duly verified by oath.

Rule 41.

Commissions to take the examination of witnesses resident without the district, or more than a hundred miles from the place of trial, may issue by order of the court in term, or of the Judge thereof in vacation, in the manner, and subject to the regulations, so prescribed by the Supreme Court of the State of New York. The name, residence and occupation of each witness must be stated in the commission, unless the Judge, upon a proper application, shall otherwise order.

Rule 42.

When a cause is noticed for trial or argument, a notice thereof, with a note of the issue, and of the pleadings and the attorney's name, shall be delivered, on or before the Monday preceding the term, to the clerk, who shall, as early as the following day, have the calendar of causes to be tried and argued properly made up, arranging them according to the dates of their issues, and separating those for trial from those for argument, and no cause shall be put upon the calendar without the special order of the court, unless the note of issue shall be furnished as hereby required.

Rule 43.

Whenever it shall be intended to move to set aside a verdict, except for irregularity, a case shall be prepared by the party intending to make the motion, and a copy thereof shall be served, within ten days after the trial, on the opposite party, who may, within ten days thereafter, prepare amendments thereto, and serve a copy on the party who prepared the case, who may then, within four days thereafter, serve the opposite party with notice to appear within a convenient time before the Judge, to have the case and amendments settled. The Judge shall thereupon correct and settle the case, as he shall deem to consist with the facts. The time for settling the case must be specified in the notice, and shall be not less than four, nor more than twenty days after service of such notice.

Rule 44.

If the party omit to make a case within the time above limited, he shall be deemed to have waived his right thereto, and when a case is made, and the parties shall omit, within the several times above limited, the one party to propose amendments, and the other to notify an appearance before the Judge, they shall respectively be deemed, the former to have agreed to the case as prepared, and the latter to have agreed to the amendments as proposed. If judgment has been rendered upon a verdict, the party intending to move for a new trial shall give four days' notice in writing to the opposite party of any motion to stay execution thereon, and also of the petition intended to be filed pursuant to the 18th section of the act of September 24th, 1789, unless a shorter time be allowed by the court or the Judge.

Rule 45.

General verdicts may be taken subject to the opinion of the court on a case to be made by the party in whose favor the verdict is taken, containing all the evidence given at the trial. Such case shall be prepared and settled in the manner prescribed in the foregoing rules, and may reserve the right to either party to turn the same into a bill of exceptions, and with liberty to the court to enter a verdict for the defendants.

Rule 46.

In cases of exceptions taken, demurrer to evidence, or special verdict, the party shall not at the trial be required to prepare his bill of exceptions, demurrer, statement of evidence, or special case, or to put in form the special verdict, but shall merely reduce such exceptions to writing, or make a minute of the demurrer to the evidence, and of the facts found specially by the jury, as the case may happen to be, and deliver it to the Judge, or the Judge himself will note the points as he may direct, and the bill, demurrer or special verdict shall afterwards be drawn up, amended and settled within such times, and under the same regulations as are made with respect to cases.

Rule 47.

A bill of exceptions may, before judgment, be used instead of a case on motion for a new trial, and notice of such motion together with an order to stay proceedings, and a copy of such bill of exceptions, shall operate to stay all further proceedings until the decision of the court: *Provided*, That proceedings shall not be longer stayed than if a case had been made.

Rule 48.

All questions for argument and all motions shall be brought before the court on motion for that purpose, and if no one shall appear to oppose, the party making the motion shall be entitled to the rule or judgment moved for, on proof of due service of the notice and papers required to be served by him.

Rule 49.

The date of issue shall be, in cases of motion in arrest of judgment, of special verdict, case reserved at the trial, motion to set aside verdict or nonsuit, bill of exceptions, or demurrer to evidence, the day on which the trial took place, and, in case of demurrer to pleadings, the day on which the joinder in demurrer was received.

Rule 50.

The party bringing on the argument shall, at the opening thereof, furnish the Judge with a copy of the case, demurrer to

evidence, special verdict or, where the motion is for a new trial upon newly discovered evidence, with copies of the affidavits and other papers, if any, on which the motion is founded, or, if the motion be in arrest of judgment, with copies of the pleadings, or so much thereof as may be necessary, properly folioed so as to correspond. A note of the points or questions intended to be raised by each of the respective parties shall also, at the same time, be furnished to the Judge and to the opposite party. If such papers shall be printed, the expenses of printing may be taxed as disbursements in the cause.

Rule 51.

Whenever an order to stay proceedings shall be granted to enable the party to make a special motion, service of such order, with copies of the affidavits upon which it is granted, and notice of the motion, shall operate as a stay of proceedings until the further order of the court. But if the party shall neglect to bring on the motion to be heard according to his notice, the proceedings shall not be longer stayed, and he shall be liable to pay the costs of attending to resist the motion.

Rule 52.

No private agreement or consent between the parties or their attorneys, in respect to the proceedings in a cause, shall be binding unless the same shall be reduced to the form of an order by consent, and entered by the clerk in the book of minutes, or unless the evidence thereof shall be in writing subscribed by the party or his attorney against whom the same shall be alleged.

Rule 53.

Notices of argument shall be accompanied with copies of the case, bill of exceptions and papers on which the argument is to be made, duly folioed to correspond with those intended for the court, and, if not, the cause may be stricken from the calendar.

Rule 54.

When a party shall, before motion, offer to comply fully with the terms of the order which it is the practice of the court,

upon motion in like cases, to make, and shall also offer to pay the costs, if any, on the same being thereupon taxed and demanded, he shall be entitled to costs from the opposite party, if the motion shall be afterwards made.

Rule 55.

In all case where a motion shall be granted on payment of costs, or on the performance of any condition, or where the order shall require such payment or performance, the party whose duty it is to comply therewith shall have ten days for that purpose, unless otherwise directed in the order. And where, by the terms of any order, an act is directed to be done *instantly*, it shall be understood to require such act to be performed within twenty-four hours, Sundays and legal holidays excluded.

Rule 56.

Whenever the plaintiff shall have neglected to bring his cause to trial according to the practice of the court, he may, if he have not before stipulated, tender a stipulation and offer to pay the costs to which the defendant is entitled up to that time, and if the defendant shall afterwards move for judgment, as in case of non-suit, he shall pay costs to the plaintiff, except where the plaintiff shall, after demand, have refused to pay the costs as taxed.

Rule 57.

When on motion for judgment, as in case of non-suit, the plaintiff shall be permitted to stipulate, he shall, within ten days thereafter, tender a stipulation to the defendant, and shall pay costs ordered to be paid thereon, and if the stipulation be not tendered, and the costs paid within that time the defendant, on filing an affidavit of such omission of tender and non-payment, may, after the expiration of ten days, enter judgment as in case of non-suit.

Rule 58.

In cases where the plaintiff is a non-resident of the State at the commencement of the action, or shall become such during the pendency thereof, the clerk, upon filing an affidavit of the fact, may enter an order of course, in the minutes of the court, that

the plaintiff file security for costs within four days from notice of such order, and that all proceedings on his part be stayed until such security be filed or such order be vacated. The security may be either by the deposit of one hundred dollars with the clerk, or by the execution and filing of a bond with sufficient security to be approved by the clerk, conditioned for the payment of the costs of suit not exceeding one hundred dollars, and, until such order be complied with, the attorney in the suit shall be liable for costs not exceeding that sum.

Rule 59.

The notice to return process shall require that the same be returned within five days after service of such notice, and on filing an affidavit of the due service thereof, and of default, the clerk may enter an order in the minutes of the court that the party show cause why an attachment should not issue.

Rule 60.

The day on which any notice, order, pleading or paper is served shall be excluded in the computation of the time for complying with the exigency thereof, and the day on which compliance therewith is required shall be included, except when the same falls upon Sunday, or upon any day set apart by the laws of this State, or of Congress, as a holiday, in which cases the party shall have the whole of the next day thereafter to comply therewith.

Rule 61.

All moneys paid into court, in causes pending therein, shall be forthwith deposited by the clerk, in the name and to the credit of the court, in such Bank or Trust Company as shall be designated for that purpose by the Judge. No moneys so deposited shall be drawn except upon the order of the Judge, signed by him, stating therein the title of the suit on account of which it is drawn, accompanying the check or draft duly signed by the clerk; the order aforesaid shall be entered of record by the clerk; any interest that may be allowed upon such deposits shall be drawn and paid, with the principal, to the parties entitled to receive such principal.

Rule 62.

All sums collected or received on forfeited recognizances, and all fines imposed and collected, shall be paid into court and be accounted for by the clerk in his account with the United States Treasury.

Rule 63.

In cases wherein the marshal of the District is a party in interest, process against him shall be directed and delivered to the sheriff of the County of Kings for the time being, who is hereby in pursuance of the statute in such case made and provided appointed to serve and execute the same.

Rule 64.

Every order to show cause why an attachment shall not issue must state the true cause or ground upon which the same is made, and require the party to appear before the Judge in court or at chambers on the return day thereof, and show cause, which shall be done by affidavits, without interrogatories, and if he fails to purge himself of every default or misfeasance specified in the order to the satisfaction of the Judge, an attachment may issue, or he may be forthwith committed for contempt, or otherwise as to the Judge may seem proper.

Rule 65.

In all cases not provided for by these rules, the rules for the time being of the Circuit Court of the United States for this District, so far as the same may be applicable, shall regulate the practice of this court.

Rule 66.

Judgments by default may be entered immediately after such default is entered, in vacation as well as in term.

Rule 67.

Upon filing a satisfaction piece, duly executed and acknowledged by the party to the action, or by the District Attorney on behalf of the United States, or upon a return of the execution duly endorsed by the marshal satisfied, the clerk shall can-

cel and satisfy the judgment of record; satisfaction may also be signed and acknowledged by the attorney of record, at any time within two years from the entry of such judgment.

Rule 68.

The marshal, his deputies, and all persons concerned in the service of any process of this court, are respectively prohibited from becoming bail upon the arrest in any suit depending in this court, and also from becoming special bail in any suit, unless for the purpose of surrendering the defendant, in which case the surrender shall be made within ten days after such special bail shall have been put in.

Rule 69.

The clerk, or, in case of his absence or inability, the deputy clerk, may tax bills of costs and sign judgment records. Costs shall be taxed upon two days' notice of taxation to the opposite party. Appeals from such taxation may be made *instantly* to the Judge, but no costs shall be allowed on such appeal.

Rule 70.

The following pleadings may be used in all civil actions at law in this court, namely, the declaration, plea, demurrer, replication, and the provisions made applicable to such or corresponding pleadings by the Laws of this State, so far as the same are not inconsistent with the laws of the United States, are adopted as rules applicable to the above mentioned pleadings in this court.

Rule 71.

Upon payment of money into court (except with a plea of tender), the plaintiff, if he accept the same, shall be entitled to costs to be taxed, and, unless the defendant pay such costs within two days after they are taxed and notice thereof, the plaintiff may take the money out of court and proceed in the cause, and he shall be entitled to a judgment for the amount so taken out with costs, but the execution thereon shall be endorsed "levy the costs of suit," and when money is paid into

court, the amount shall not be struck out of the declaration or verdict, but the plaintiff shall deduct the sum from his execution.

Rule 72.

In the sale of real estate under execution issuing out of this court, the marshal shall conform his proceedings to the directions of the law of this State for the time being in relation to the sale of real estate in execution, and, in addition to the certificate filed with the clerk of the county where the lands sold are situated, he shall file a copy thereof with the clerk of this court.

Rule 73.

Redemption of lands sold under execution out of this court, so far as the same may be allowed by law, may be made in the same manner, and with like effect, and by the same persons as prescribed by the law of this State. And the sales by the marshal shall be made subject to such redemption.

The forgoing rules, as amended and revised, are adopted as the rules of the District Court of the United States for the Eastern District of New York, in cases at law.

Dated MAY 24th, 1865.

ADDITIONAL RULES.

JULY 13th, 1867.

Whenever a motion shall be noticed for hearing on any day on which there shall be no District Judge in attendance to hear the same, the papers thereon shall be handed to the clerk to be by him forwarded to the Judge at the earliest practicable day, for decision thereon, provided any one shall appear to oppose such motion, but if there be no opposition thereto, the clerk is authorized to enter, as of course, the usual order in such cases.

Whenever any party, in any suit or proceeding pending in this court, shall desire to submit proofs to the Court, and there shall be no Judge in attendance to hear the same, such proofs may be taken before the clerk under an order of reference, to be entered as of course, with the like effect as if taken before the Judge in open court, and the same shall then be forwarded by the clerk to the Judge for his

decision thereon, but this provision shall not apply to any final hearing in a cause where either party shall oppose.

JANUARY 30th, 1868.

When a still used or fit for the production of distilled spirits forms part of the property declared forfeited, in any case, the marshal, upon the receipt of the writ of *venditioni*, shall, after at least six days' public notice of the time and place, expose such still for sale in the following manner, that is to say: the still, including the worm and worm-tub, the fore heater and doubler, when the same or either of them shall have been seized and condemned, shall be put up together as a single article and sold to the highest bidder, provided the amount bid therefor and then paid shall exceed the sum of \$1,000. And in case said property does not so bring a sum exceeding \$1,000, the marshal shall forthwith cut up the pipe, stoves, &c., and render such property useless for the purpose of distilling, and shall then proceed to sell the material thereof to the highest bidder.

This rule shall be read, or the substance thereof stated, by the marshal at all sales of still made by order of this court, and form part of the terms of sale.

ADMIRALTY RULES

OF THE

DISTRICT COURT OF THE UNITED STATES FOR
THE EASTERN DISTRICT OF NEW YORK,

APPLICABLE IN ALL INSTANCE CAUSES, CIVIL AND MARITIME.

[Adopted December 29th, 1870.]

The following rules are adopted as the Rules of the District Court of the United States, for the Eastern District of New York, by virtue of the forty-sixth Admiralty Rule promulgated by the Supreme Court of the United States; and are to be deemed subject to be modified by special order, in any case, when it shall be made to appear that the due administration of justice requires a modification to be made.

Rule 1.

Libels and answers (except on behalf of the United States), shall be verified by the oath or affirmation of the party, or of some person having knowledge of the facts stated in such pleading.

Rule 2.

Libels, and other papers to be filed, shall be plainly and fairly engrossed, without erasures or interlineations materially defacing them. If papers not conforming to this rule are offered, the clerk shall require the *allocatur* of the judge to be endorsed thereon, before he receives them on the files.

Rule 3.

In suits for seamen's wages, any mariner in the same voyage,

not made a party, may, by short petition to the court, in any stage of the cause previous to the final distribution of the fund in court, or discharge of the defendant and his sureties, be joined as libellant in the cause. In cases of salvage and other causes, civil and maritime, persons entitled to participate in the recovery, but not made parties in the original libel, may, upon petition, be admitted to prosecute as co-libellants, on such terms as the court may deem reasonable.

Rule 4.

Wednesday of each week shall be a general return day, and is appointed as a special sessions of the court (except the stated term be then in session), at which the same proceedings may be taken in causes of admiralty and maritime jurisdiction as at a stated term.

All process shall be made returnable at a general return day, unless on cause shown it is otherwise ordered.

Rule 5.

In all possessory actions, the process shall be made returnable at the first general return day after the filing of the libel, unless otherwise ordered by the judge. In such actions, the answer will be required to be filed, upon return of the process duly served, and a day for hearing will then be fixed, unless otherwise ordered for cause shown. No property seized or detained in such actions, will be discharged from custody upon stipulations or otherwise, except upon the order of the court, after notice to the adverse party of application for such order. Notice by publication will not be required in possessory actions, unless specially ordered.

Rule 6.

Process, orders to show cause, and notices of motion shall upon the return day thereof be called by the clerk; and thereupon, when there is no opposition, the orders prayed for, in accordance with the practice of the court, may be entered by the clerk, whether the judge be actually present or not; and in like manner orders, which according to the practice of the court are granted as of course, may be entered, reserving to any party affected thereby, the right to apply to the judge at

the earliest opportunity to vacate or modify the same. In the event of opposition, the papers may in the absence of the judge be left with the clerk, to be by him submitted to the judge for decision thereon, or the clerk may adjourn the matter until the judge shall be in attendance.

Rule 7.

No process *in personam*, for the arrest of any person, in cases of torts or unliquidated damages, shall issue, except upon the mandate of the judge.

Rule 8.

In cases of liquidated damages, when the demand does not exceed the sum of five hundred dollars, and the certainty and amount of the demand appear upon the face of the libel, an attachment *in personam*, or warrant of arrest, may be issued by the clerk without an order. The attachment shall plainly express the cause of action and the amount of the demand, and the clerk shall endorse thereon the sum for which bail is required, not exceeding one hundred dollars above the sum sworn to be due and unpaid, and not exceeding in all the sum of five hundred dollars. No attachment or citation shall be issued until the libellant shall have filed a stipulation for costs, in the sum of one hundred dollars, except in suits by the United States.

Rule 9.

No warrant with an attachment clause therein against credits or effects, in the hands of third parties, will be issued, unless the libel set forth the names of the garnishees intended to be served; and when such warrant shall be issued, it shall contain a citation to such garnishees, to be named therein, to appear at the time and place designated for the appearance and answer of the respondent in the warrant, to answer on oath as to the debts, credits, and effects of the respondent in their hands, and to such interrogatories touching the same as may be propounded by the libellant.

In case a garnishee, after due citation, fails to appear and answer at the time and place named in the citation, an order may be entered, declaring him to be in contumacy, and direct-

ing that he show cause why an attachment for contempt should not issue against him.

When property, debts, credits, or effects of the respondent shall be found to have been attached, and the respondent has failed to appear and answer the libel, the court will proceed *ex parte*, and will pronounce the proper decree to secure the application of the attached property, debts, credits, or effects, to the payment of the sum adjudged to be due.

Rule 10.

Whenever in an action *in personam*, any debts, credits, or effects shall be attached in the hands of any third party, the court may, upon due application, require the party charged with the possession thereof, to appear and show cause why the same should not be brought into court, to answer the exigency of the suit; and if no sufficient cause be shown, the court may order the same to be forthwith brought into court, to answer the exigency of the suit; and upon failure of the party to comply with the order, may award an attachment or other compulsive process to compel obedience thereto.

Rule 11.

On the return of the attachment of debts, credits, or effects of a respondent, and the citation of the garnishees, the garnishees shall file an affidavit containing a full and true statement of all property, debts, credits, or effects in their hands, or subject to their control, belonging to the principal party at the time the attachment was served, and at the time the answer is made; and declare whether they have any, and, if any, what claim to any and what part thereof; and shall then, on motion of the actor, pay into court such amount as they shall not claim, or as may be ordered by the court; or they may be required to give stipulation, with sufficient surety, to abide the further order or decree of the court in relation thereto. If it do not appear by the answer of the garnishees, that property, credits, or effects of the defendant, sufficient to answer the exigencies of the suit, have been attached, the actor may move for an order that the garnishees attend before the court, or a commissioner, and answer all proper interrogatories touching such

property, credits, or effects. On the default of any garnishee, in this behalf, an order may be entered, directing that an attachment issue against him, unless he shall show cause in four days, or on the first day the court is in session afterwards.

Rule 12.

When the property, effects, or credits named in the process are not delivered up to the marshal by the garnishee or trustee, or are denied by him to be the property of the party, it shall be a sufficient service of such attachment to leave a copy thereof with such trustee, or at his residence or usual place of business, unless the libellant shall, by competent surety, indemnify the marshal for arresting the property pointed out to him.

Rule 13.

All process to the marshal shall be returned on the return day thereof, and, if he shall not return the same in four days after being required in writing so to do, by any party or his proctor, upon affidavit of such requirement and of the delivery of the process to him, an order may be entered, of course, that he show cause why an attachment shall not issue against him ; and, in the case of process *in rem*, the return of the marshal shall express the day of the seizure of the property or the day of sale, if the process is for that object.

Rule 14.

No decree shall be entered by default, or consent of parties in court, ordering the condemnation and sale of property arrested on process *in rem*, or for the distribution of the proceeds thereof in court, unless publication, according to the course of the court, shall have been duly made before the return day of the monition issued with the attachment in the case.

Rule 15.

In case of the attachment of property, or the arrest of the person, in causes of civil and admiralty jurisdiction (except in suits for seamen's wages, when the attachment is issued upon certificate, pursuant to the Act of Congress of July 20th, 1790), the party arrested, or any person having a right to intervene

in respect to the thing attached, may, upon evidence showing any improper practices, or a manifest want of equity on the part of the libellant, have a mandate from the judge, for the libellant to show cause *instantly* why the arrest or attachment should not be vacated.

Rule 16.

Stipulations may be taken, in admiralty and maritime causes, out of court, before the clerk or a commissioner duly authorized to take the same. The officer taking the stipulation shall, if required by the opposite party, examine the sureties on oath, and decide as to their competency. An appeal may be taken *instantly* to the judge, in case the decision is against the sufficiency of the sureties.

Rule 17.

Property under arrest may be discharged on stipulation, upon one day's notice of the application to the proctor of the libellant, specifying the sureties intended to be given, and their occupations and places of residence, and the officer before whom, and the place where, the stipulation will be offered, except in suits by seamen for wages, when such notice may be *instantly*.

Rule 18.

In all cases where the approval of the judge of this court of the sufficiency of sureties to bonds or stipulations is required, it shall be necessary to give notice in writing, a reasonable time previous to the application, to the proctor of the libellant in the action, stating the time and place of the application for such approval, and the name, occupation, and residence of the sureties to be offered; and the application shall be accompanied by proof of the service of such notice.

Rule 19.

All stipulations in causes civil and maritime shall be executed by the principal party (if within the State), and at least one surety resident therein, and shall contain the consent of the stipulators, that, in case of default or contumacy on the part of the principal or sureties, execution to the amount named in such stipulation may issue against the goods, chattels, and

lands of the stipulators. The court will modify the execution as to the time it may stay and the amount to be collected, according to the equity of the case. Non-residents of the State must supply at least two sureties.

Rule 20.

In all cases of stipulations, in civil and admiralty causes, any party having an interest in the subject-matter, may move the court, on special cause shown, for greater or better security, giving the opposite party two days' notice thereof, unless a shorter time is allowed by order of the judge.

Rule 21.

The clerk shall provide a book, in which shall be registered or recorded all stipulations filed in causes civil and admiralty, which shall be open to the examination of all parties interested.

Rule 22.

No process *in rem* shall be issued, nor shall any appearance or answer be received, or third party be permitted to intervene and claim, except on the part of the United States, unless a stipulation, in the sum of two hundred and fifty dollars, shall be first entered into by the party, and at least one surety, resident in the State, conditioned that the principal shall pay all costs awarded against him by this court, or, in case of appeal, by the appellate court.

Rule 23.

But seamen suing for wages, in their own right and for their own benefit, for services on board American vessels, and salvors coming into port in possession of the property libeled, shall not be required to give such security in the first instance. The court, on motion, with notice to the libellants, may, after the arrest of the property, for adequate cause, order the usual stipulation to be given in these cases, or that the property arrested be discharged.

Rule 24.

Notice of the arrest of property by attachment *in rem*, in behalf of individual suitors, shall be published in the manner

directed by Act of Congress in case of seizures on the part of the United States, except when the judge by special order directs a shorter notice than fourteen days; and except that, instead of the substance of the libel, a short statement of its purport may be given.

Rule 25.

Notice of sale of property after condemnation, in suits *in rem* (except under the revenue laws and on seizure by the United States), shall be six days, unless otherwise specially directed in the decree of condemnation and sale. All such notices shall be published in the manner directed by Act of Congress, in the case of condemnation under the revenue laws.

Rule 26.

After a citation or monition, or warrant of arrest, in suits *in personam*, returned "served personally," if the defendant do not appear at the return day, he shall be deemed in contumacy and in default, and the libellant may take an order for enforcement of the stipulation (in case any is given), or to compel the defendant's appearance, according to the course of admiralty proceedings; or, at his option, may proceed to hearing *ex parte* and obtain the proper decree, unless the court, for good cause, shall allow the defendant further time.

Rule 27.

In case of seizure of property in behalf of the United States, an appraisement for the purpose of bonding the same, may be had by any party in interest, on giving one day's previous notice of motion before the court, or the judge in vacation, for the appointment of appraisers. If the parties or their proctors and the District-Attorney are present in court, such motion may be made *instantly*, after seizure, and without previous notice.

Rule 28.

Orders for the appraisement of property under arrest at the suit of an individual, may be entered, of course, by the clerk, at the instance of any party interested therein, or upon filing the consent of the proctors for the respective parties. Only one appraiser is to be appointed in suits by individuals, unless

otherwise specially ordered by the judge, and, if the respective parties do not agree in writing upon the appraiser to be appointed, the clerk shall forthwith name him, either party having a right of appeal *instantly* to the judge from such nomination, for adequate cause.

Rule 29.

Appraisers, before executing their trust, shall be sworn or affirmed to its faithful discharge, before the clerk or his deputy (who are hereby appointed commissioners for the qualification of appraisers), and shall give one day's previous notice of the time and place of making the appraisement, by affixing the same in a conspicuous place adjacent to the United States Court Rooms, and where the marshal usually affixes his notices, to the end that all persons concerned may be informed thereof, and the appraisement, when made, shall be returned to the clerk's office; and like notice shall also be given to the adverse party, by the party obtaining the order of appraisement.

Rule 30.

Appraisers acting under an order of this court, shall be severally entitled to three dollars for each day necessarily employed in making the appraisement, to be paid by the party at whose instance the same shall be ordered.

Rule 31.

In suits *in rem* for seamen's wages, and in all other actions *in rem* for sums certain, the claimant or respondent may pay into court the amount sworn to be due in the libel, with interest computed thereon from the time it was due, to the stated term next succeeding the return day of the attachment, and the costs of the officers of court already accrued, together with the sum of two hundred and fifty dollars to cover further costs, &c.; or, at his option, may give stipulation to pay such sworn amount, with interest, costs, and damages (first paying into court the costs of the officers of court already accrued), and, in either case, may thereupon have an order entered *instantly*, for discharge of the property arrested, without having the same appraised.

Rule 32.

No vessels, goods, wares, or merchandise in the custody of the marshal shall be released from detention, upon appraisement and surety, until the costs and charges of the officers of this court, so far as the same shall have accrued, shall first be paid into court by the party at whose instance the appraisement shall take place, to abide the decision of the court in respect to such costs.

Rule 33.

No property in the custody of any officer of the court shall be released without the order of the court; but (except in possessory or petitory actions), such order may be entered, of course, by the clerk, on filing a written consent thereto by the proctor in whose behalf it is detained; and, also, after appraisement and bond duly executed. No property detained in possessory or petitory suits, will be discharged from custody upon stipulation, or otherwise, except upon motion, and due cause shown, which motion may be made by either party on reasonable notice to the adverse party.

Rule 34.

If, in possessory suits, after decrees for either party, the other shall make application to the court for a proceeding in a petitory suit, and file the proper stipulation, the property shall not be delivered over to the prevailing party, until after an appraisement made, nor until he shall give a stipulation with sureties to restore the same property without waste, in case his adversary shall prevail in the petitory suit, and also to abide as well all interlocutory orders and decrees, as the final sentence and decree of the District Court, and, on appeal, of the appellate court.

Rule 35.

A tender *inter partes* shall be of no avail in defence, or in discharge of costs, unless, on suit brought, and before answer, plea, or claim filed, the same tender is deposited in court, to abide the order or decree to be made in the matter. When tender is first made after suit brought, it must include taxable costs then accrued.

Rule 36.

No party can intervene by claim, without proof of a subsisting interest in the subject-matter of the claim. This proof may, in the first instance, be the oath of the claimant, but subject to denial and disproof on the part of the libellant, on issue thereto or on summary petition.

Rule 37.

Defence may be made by answer or claim, of matters of law or fact, without the employment of exceptions or special pleas usual in causes of civil and maritime jurisdiction, other than exceptions to the competency of the party or the process, or other matter of abatement.

Rule 38.

An answer or claim on the part of the United States is to be put in without oath, by the District Attorney, and is not subject to exception for insufficiency.

Rule 39.

The defendant may, on the return day of process, and before answering, demurring, or pleading, file an exception to the libel, that it is multifarious or ambiguous, or without plain allegations upon which issue can be taken; and, if it be adjudged by the court insufficient, for any of these causes, and be not amended by the libellant within two days thereafter, it shall be dismissed, with costs. Proceeding upon such exceptions shall conform to those on exceptions to answers or other pleadings.

Rule 40.

The libellant may, within four days from the filing of the answer or claim, file exceptions thereto, for insufficiency, irrelevancy, or scandal, which exceptions shall briefly and clearly specify the parts excepted to, by the line and page of the papers in the clerk's office; whereupon, the party answering or claiming shall, in four days, give notice to the libellant of his submitting to the exceptions, or the exceptions will be set down for hearing, for the earliest day afterwards.

Rule 41.

If a party submit to exceptions for insufficiency, he shall answer further, within four days after notice of his submitting. If the exceptions are allowed on hearing, he shall answer further within such time as the court shall direct; and, if the hearing of the exceptions shall not be duly brought on, or the further answer duly put in, the claim or answer excepted to shall be treated as a nullity, and the default of the party be entered.

Rule 42.

If exceptions for irrelevancy be submitted to, or be allowed by the court, or the hearing be not duly brought on by the respondent, the matter excepted to shall be struck out of the claim or answer by the clerk.

Rule 43.

When various actions are pending, all resting upon the same matter of right or defence, the court, by order, at its discretion, will compel the parties to abide by the decision rendered in one case, and will enter a decree in the other causes conformably thereto, although there be no common interest between the parties.

Rule 44.

Commissions for taking testimony, shall be moved for in four days after the claim or answer is filed and perfected (if the same shall have been excepted to); but if interrogatories shall be propounded for the other party, by the party who moves for a commission, he shall have four days for moving after the answers to the interrogatories shall be perfected; otherwise, such commission shall not operate to stay proceedings; but, on a proper case shown, application for a commission and for a stay of proceedings may be made at any time after the action is commenced, and before issue joined, or after a default or interlocutory decree.

Rule 45.

Affidavits on which a motion for a commission is made shall specify the facts expected to be proved, together with the names of the witnesses, and the shortest time within which the

party believes the testimony may be taken and the commission returned. On special cause shown, an order for the examination of parties not named, may be applied for on notice to the adverse party.

Rule 46.

A commission will not be allowed to stay proceedings, if the opposite party admits in writing that the witnesses will depose to the facts stated in such affidavit ; such affidavit, with the admission, may be read on the trial or hearing, and will have the same effect as a deposition to those facts by the witness or witnesses named.

Rule 47.

The motion may be noticed and made at term, before the court, or in vacation before the judge out of court, and only one commissioner will be named, unless special cause is shown for appointing a greater number, nor will costs be taxed for the services of more than one, except where both parties require a greater number.

Rule 48.

Interrogatories for the direct and cross-examination, in case the parties disagree respecting them, shall be presented to the judge for his allowance at one time, and one day's notice of such reference shall be given by the party objecting to the opposite interrogatories.

Rule 49.

Cross-interrogatories shall be served within four days after the direct have been received, or they shall be regarded as assented to, and, if no notice of reference to the judge is given within five days after both direct and cross-interrogatories have been served, each party shall be deemed to have assented to the interrogatories served.

Rule 50.

The interrogatories, direct and cross, as agreed to by the parties, or settled by the judge, shall be annexed to the commission. Directions as to the execution and return of the commission, signed by the clerk, shall accompany the commission.

Rule 51.

Depositions taken under commission, or otherwise, shall be forwarded to the clerk immediately after they are taken, and be filed on their return to the clerk's office, in term or vacation, and notice thereof shall be forthwith given by the party filing them to the proctor of the opposite party. And all objections to the form and manner in which they were taken or returned shall be deemed waived, unless such objection shall be specified in writing in four days after notice that the same are opened, unless further time shall be granted by the judge.

Rule 52.

In suits between individuals, either party may, at any time after the commissions or depositions are deposited with the clerk, enter an order of course, as of a special sessions, if in vacation, to open the same and deliver copies thereof.

Rule 53.

In suits on seizures, in which the United States are a party, such order may be entered on the written consent of the proctors or attorneys of the respective parties, or on motion to the court at a stated or special session.

Rule 54.

Opening such commissions or depositions shall not preclude either party from objecting to the competency or relevancy of the evidence when offered on the trial.

Rule 55.

Exceptive allegations to the credibility or competency of witnesses examined on deposition or commission, may be filed within four days after the depositions or commissions are opened at the clerk's office, and notice shall be given forthwith of such exceptions. Testimony impeaching or supporting the witnesses may, in such case, be given by the parties respectively, on the hearing of the cause, and may be taken in the same manner as proofs in chief.

Rule 56.

Depositions *in perpetuam rei memoriam*, to be used in this court, may be taken under a *dedimus potestatem*, or by any officer authorized by Act of Congress to take depositions *de bene esse*, to be used in the Courts of the United States, when so ordered by the judge.

Rule 57.

When either party shall require *viva voce* testimony given in open court, to be taken down by the clerk pursuant to the Act of Congress, it shall be taken in the same manner as in jury trials on common law issues, and not *verbatim*, as in depositions *de bene esse*.

Rule 58.

The notes of the judge or of a stenographer, when one is employed by consent of parties, may, by assent of parties, be used as if taken down by the clerk.

Rule 59.

Either party desiring to diminish, vary, or enlarge the minutes of proofs, may, within five days after the close of the testimony, serve a statement of proofs on the proctor of the opposite party, and such statement, if assented to, or, if no amendments are proposed thereto, within two days thereafter, by such proctor, shall be regarded as the true minutes of the testimony given, and the notes be corrected in conformity thereto.

Rule 60.

If amendments are proposed and the parties do not agree therein, the statements and amendments shall be forthwith referred to the judge, and he shall settle or determine how the facts are, and the statement thus settled or adjusted shall be filed as the true minutes of the testimony given.

Rule 61.

Either party may except to the report of a clerk or commissioner, and set down the exceptions for hearing, on two days' notice, at the first stated or special sessions thereafter, or the clerk will place the cause on the next admiralty calendar.

Rule 62.

Upon the coming in of the report, an order of confirmation *nisi* may be entered, on motion, without notice, unless otherwise ordered by the court, or the report shall be excepted to; and if no exceptions be filed within four days after notice of such confirmation, decree final may be entered.

Rule 63.

A guardian *ad litem* will be appointed, on a petition, verified by oath, stating a proper case for such appointment; and the guardian shall give stipulations for costs, &c., the same as if he was personally the party in interest.

Rule 64.

Infants may sue by *prochein ami*, to be first approved by the court; the *prochein ami* to give stipulations, and be responsible for costs, in the same manner as the infant would be if of full age.

Rule 65.

Suits can only be prosecuted or defended in *forma pauperis* by express allowance of the court. In such case, the pauper will be discharged of all stipulations or liabilities for costs. But the court, on satisfactory proof of the inability of a party to comply with the usual stipulations in a cause, may mitigate and modify such stipulations conformably to the equities or exigencies of the case.

Rule 66.

Where proceedings on a decree shall not be stayed by an appeal, and the decree shall not be fulfilled or satisfied in ten days after notice to the proctor of the party against whom it shall be rendered, it shall be of course to enter an order that the sureties of such party cause the engagement of their stipulation to be performed, or show cause in four days, or on the first day of jurisdiction afterwards, why execution should not issue against them, their lands, goods, and chattels, according to their stipulation; and, if no cause be then shown, due service having been made on the proctor of the party, a summary decree shall be rendered against them on their stipulations, and

execution issue; but the same may be discharged on the performance of the decree and payment of all costs.

Rule 67.

A special session of the court (besides the sittings on Wednesday of each week) may be opened at any time *instante*, on the allowance of the judge, for hearing and disposing of special motions, arguments on questions of law, and also for taking proofs, or hearing admiralty and maritime or revenue causes, and rendering interlocutory or final decrees therein.

Rule 68.

Whenever, from the death of any of the parties, or changes of interest in the suit, defect in the pleadings or proceedings, or otherwise, new parties to the suit are necessary, the persons required to be made parties may be made such either by a petition on their part or on the part of the adverse party.

Rule 69.

In either mode, it shall be sufficient to allege briefly the prayer of the original libel, the several proceedings in the cause and the date thereof, and to pray that such persons required to be made parties to the suit may be made such parties.

Rule 70.

On service of a copy of such petition and of notice of the presenting thereof, such order shall be made for the further proceeding in the cause as shall be proper for its speedy and convenient prosecution as to such new parties, and the same stipulations and security shall, in all such cases, be required and given, as in cases of persons becoming originally parties to a suit.

Rule 71.

A party shall not be held to enter his appeal from any decree or order of the court as final, unless the same is in a condition to be executed against him without further proceedings therein in court.

Rule 72.

Ten days from the time of rendering the decree shall be allowed to enter an appeal, within which time the decree shall not be executed. A brief notice in writing to the clerk and opposite proctor, that the party appeals in the cause, shall be a sufficient entry of the appeal, without any petition to the court for leave to enter the same.

Rule 73.

When an appeal shall be so entered, the appellant shall, within ten days after filing the notice, give security for damages and costs; and, if security shall not be given within that time, the decree may be executed as if there had been no appeal, unless further time be allowed by the court.

Rule 74.

The appellant shall give four days' notice to the adverse party, or his proctor, of the person or persons proposed as his sureties, with their additions and descriptions, and of the time and place of giving the stipulation.

Rule 75.

When an appeal shall be entered, the appellant shall cause the proceedings of the court, required by law to be transmitted to the Circuit Court, to be transcribed for that purpose within thirty days after the appeal shall be entered in this court; and, in default thereof, the decree shall be executed as if there had been no appeal, unless the court shall, upon special motion of the appellant, otherwise order.

Rule 76.

No libel of review will be entertained in cases subject to appeal, nor unless filed before the enrolment of the decree or return of final process issued in the cause.

Rule 77.

When any moneys shall come to the hands of the marshal under, or by virtue of any order or process of the court, he

shall forthwith pay over the gross amount thereof to the clerk, with a bill of his charges thereon, and a statement of the time of the receipt of the moneys by him, and, upon the filing of such statements, and the taxation of such charges, the same shall be paid to the marshal out of such moneys; and the general account of all property, sold under the order or decree of this court, shall be returned by the marshal and filed in the clerk's office, with the execution or other process under which the sale was made.

Rule 78.

All bills of costs and of charges to be paid under any order or decree of this court, shall be taxed and filed with the clerk before payment thereof; and, if the same shall include charges for disbursements other than to the officers of the court, the proper and genuine vouchers, or an affidavit thereof (in cases of loss of vouchers), shall be exhibited and filed, and, if such bill shall be taxed without four days' notice to all parties concerned, they shall be subject to a re-taxation, of course, on application by any such party, not having had notice, and at the charge of the party obtaining such taxation.

Rule 79.

The clerk is authorized to tax or certify bills of costs and to sign judgments, and also take acknowledgments of the satisfaction of judgments and all affidavits and oaths out of court, as in open court, in all cases where the same are not required by law to be taken in open court.

Rule 80.

The deputies or chief clerks of the clerk of this court, not exceeding two in number, and named and designated by an appointment filed in the office of said clerk, are each authorized to sign judgments, to tax and certify all bills of the costs in this court, other than those of the clerk, and also to affix the seal of the court and certify proceedings or papers in the name of the clerk, in all other cases than exemplifications of the records or files of the court, and to perform all duties appertaining to the clerk by the appointment of the court, or the course of practice, which are not specifically appointed by statute to be performed by the clerk.

Rule 81.

The clerk is authorized to enter satisfaction of record of any judgment rendered in this court in behalf of the United States, on filing acknowledgment of satisfaction of the same duly made by the District Attorney.

Rule 82.

Attorneys, proctors, and advocates of any Circuit or District Court of the United States, and attorneys of the Supreme Court of this State, may be admitted proctors and advocates of this court, upon taking the oaths prescribed by the Constitution and Laws of the United States. But no such admission will be granted, unless the same be moved by some proctor or advocate of the court.

Rule 83.

No notice of trial or note of issue, in any cause, shall be required to place a cause upon the calendar. An admiralty calendar shall, for each term designated for the hearing of admiralty causes, be made up by the clerk, who will place thereon all causes at issue in their proper order, and will thereupon, and at least four days prior to the commencement of the term, give notice to the respective proctors of the placing of the cause upon such calendar, with the number thereof, together with the time and place when and where the same will be called. Proof of service of such notice of trial shall be furnished by the certificate of the clerk. The calendar will be called upon the day designated in such notice, and the default of any party not attending may be entered without further notice upon filing proof of service of the notice.

Rule 84.

Upon consent of the parties, or upon the order of the court, any cause may be omitted from the calendar, until the further order of court.

Rule 85.

At any term, when no admiralty calendar has been made up, the proctor in any cause may, upon two days' notice to the other side, apply to have the same heard upon a day to be designated by the court.

Rule 86.

Where bail is taken by the marshal, the bond or stipulation shall be forthwith filed in court, and upon such filing, and the justification of the sureties before the clerk or a commissioner duly authorized, on notice to the libellant of the time and place thereof, the marshal shall be deemed discharged of responsibility for the appearance of the defendant.

The marshal shall be deemed in like manner discharged by the omission of the libellant to give written notice to the marshal, to be served within five days after the receipt of notice in writing of the filing of the bond, that the sureties are required so to justify. An appeal may be taken *instantly* to the judge from the decision of the clerk or commissioner as to the sufficiency of the sureties, in which case, the justification shall not be deemed complete until the affirmance of the decision by the judge.

Rule 87.

In any admiralty proceeding *in rem* where no proctor has appeared for any claimant, a *venditioni exponas* will not be issued, nor a decree entered unless proof be furnished of actual notice of the action to an owner or agent of the vessel proceeded against, or to a master in command thereof, in addition to the proof of publication of the notice of arrest of the vessel; or, unless it be made to appear on special application to the court that such actual notice is unnecessary.

Rule 88.

In any case of admiralty and maritime jurisdiction other than seaman's wages, where the libel claims less in amount than \$50.00, no process *in rem* shall issue, except by special order of court, unless there is attached to the stipulation for costs given by the libellant an affidavit of the surety therein named to the effect that he is not at the time surety upon any other subsisting stipulation in this court, nor connected with the cause as proctor or advocate.

X.

RULES.

NORTHERN DISTRICT OF NEW YORK.

CIRCUIT COURT.

JUDGES AND OFFICERS
OF THE
CIRCUIT COURT OF THE UNITED STATES
FOR THE
NORTHERN DISTRICT OF NEW YORK.

SAMUEL BLATCHFORD—Associate Justice of the Supreme Court of the United States assigned to the Second Judicial Circuit—Circuit Justice.

No. 1432 K Street, N. W., Washington, D. C.

WILLIAM J. WALLACE—Circuit Judge.
Syracuse, Onondaga Co., New York.

Judge's Chambers, Bastable Block, E. Genesee Street, Syracuse, Onondaga Co., New York.

MARTIN I. TOWNSEND—United States Attorney.
Troy, Rensselaer Co., New York.

United States Attorney's Office at Troy, Rensselaer Co., New York.

WILLIAM S. DOOLITTLE—Clerk Circuit Court.
Utica, Oneida Co., New York.

Clerk's Office at Utica, Oneida Co., New York.

C. D. MACDOUGALL—United States Marshal.
Auburn, Cayuga Co., New York.

Marshal's Office at Rochester, Monroe Co., New York.

JUDGES AND OFFICERS OF THE CIRCUIT COURT. 623

Court Rooms in Albany, Albany Co., are in the United States Government Building, cor. State Street and Broadway.

Court Rooms in Utica, Oneida Co., in the United States Building, Broad Street.

Court Rooms in Canandaigua, Ontario Co., in the United States Court Room, Court House.

Court Rooms in Syracuse, Onondaga Co., in the County Court House, W. Genesee Street.

Circuit Courts are held at Canandaigua, on the 3d Tuesday in June; at Syracuse, on the 3d Tuesday in November; at Albany, on the 3d Tuesday in January; at Utica, on the 3d Tuesday in March.

For FEDERAL STATUTES especially relating to this Court, see 22 Stat. at Large, 32. Also

Respecting the PRACTICE in the CIRCUIT COURTS generally, their power to make RULES, etc., pp. 353 to 355.

Respecting FEES, etc., pp. 357 to 372.

Respecting the JURISDICTION of this Court, p. 375.

Respecting SESSIONS, etc., pp. 377 and 387.

RULES
OF THE
CIRCUIT COURT OF THE UNITED STATES
FOR THE
NORTHERN DISTRICT OF NEW YORK.

[The Clerk of the Court states that the numbering of the Rules is simply arbitrary, that the original Rules as entered in the Clerk's office have no numbers whatever, and the numbers given below were given in the Clerk's office simply for convenience' sake. These Rules as here published contain those heretofore published in Blatchford's Circuit Court Reports, and some furnished by the Clerk. Rules 1 to 6 inclusive were adopted at October Term, 1841.]

Rule 1.

Attorneys and counsellors of the Supreme Court and solicitors and counsellors of the Court of Chancery of the State of New York, may, on motion in open court, or on presentation of their licenses to the clerk in vacation, be admitted of course to the same degrees in this court; and attorneys and solicitors of the said courts may also, in like manner, be admitted as counsellors of the said courts, and proctors may be admitted as advocates on the admiralty side of this court.

Rule 2.

All persons who had been admitted and were entitled to practise as attorneys, counsellors, solicitors, proctors or advocates, in the District Court of the United States for the Northern District of New York, on the third day of March, eighteen hundred and thirty-seven, shall be entitled to practise in the like capacity in this court.

Rule 3.

Grand and petit jurors, to serve at the sessions of the court required by law to be held at Albany, shall be taken alternately from the counties of Albany and Rensselaer; and those to serve at the session required to be held at Canandaigua shall be taken from the county of Ontario; and they shall be drawn, summoned and returned in the manner prescribed by the rules of the District Court for the Northern District of New York, for the drawing, summoning and returning of jurors to serve therein.

[See Rule without number adopted at January Term, 1870, p. 631, and considered as an amendment to this Rule.]

Rule 4.

This Rule is *obsolete*. It related to the subdivisions of the district for trial of issues. This subdivision of the district was abolished by Act of Congress of 24th March, 1860, ch. 7, 12 Stat. at Large, 3.

Rule 5.

In cases not provided for by the rules of this court, the rules of the District Court for the Northern District of New York, so far as the same are in their nature applicable, are to be considered as rules of this court.

[See Rule 13 of the Circuit Court of this District, p. 629.]

Rule 6.

All general rules of practice heretofore made, are abrogated.

Rule Without number.

OCTOBER 22d, 1850.

Whereas Samuel Blatchford, Esq., counsellor at law, has been appointed Reporter of the decisions of the Circuit Judge in the Circuit Courts of the United States held in the Second Circuit thereof:

Ordered, That the solicitors, attorneys, and proctors of said Courts, in cases of motions for new trials, demurrers, writs of error, appeals in Admiralty, and cases in equity, bringing on the argument, furnish the said Reporter with a copy of the

case, demurrer book, error book, apostles, including all proofs in the Court below and in this Court in the case, and of the pleadings and proofs in equity, as the case may be, at or before the commencement of the argument.

Rule 7.

JUNE TERM, 1855.

Ordered, That the clerk of this court be and is hereby vested with general power to name commissioners, in commissions to be issued to take testimony, in like manner that the court or judge thereof can now do by the 67th equity rule prescribed by the Supreme Court of the United States.

Rule 8.

JUNE TERM, 1858.

It is hereby ordered that the rule formerly adopted by the District Court of this District, while having Circuit Court powers, and which afterward became and was made a rule of this court under which the first judges of the county courts and the clerks of the several counties in this district were made or appointed commissioners, and authorized to discharge certain duties conferred by acts of Congress upon commissioners appointed by the Circuit Courts of the United States, shall be and the same is hereby repealed, annulled and vacated, and that such officers and persons shall no longer be ex-officio commissioners under the said acts of Congress by appointment of this court, or of the said District Court, whilst exercising the powers and authority of a Circuit Court.

Rule 9.

JUNE TERM, 1864.

When a fine or penalty is paid into court, and the whole thereof shall belong to the United States, or one-half thereof shall belong to the Government, and the other half thereof to any other party, the clerk shall as soon thereafter as practicable, unless a stated term of the court shall then be in session, and then as soon as practicable after the end of such term, pay to the proper depository the amount thereof belonging to the United States; and any person claiming any portion of such fine or penalty, as the discoverer or informer, or prosecutor of

the offender, incurring such fine or penalty, shall, on or before the first day of the next stated term of the court, file with the clerk of the court his affidavit, and such other papers as he may think proper, showing his right to a moiety of such fine or penalty; which affidavit and papers shall be presented to the court by the clerk on the second day of such term.

Rule 10.

In cases under the act "to provide Internal Revenue," &c., the person so claiming shall file with such affidavit and papers, the written consent of the Collector of Internal Revenue for the district in which such fine or penalty was incurred, that a moiety shall be paid to such claimant, or shall show by affidavit that a copy of such affidavit and papers had been served on such Collector at least eight days before the commencement of such term.

Rule 11.

OCTOBER TERM, 1864.

The cases and points, and all other papers furnished to the court in calendar causes, other than causes for trial before a jury, except the papers sent up from the District Court on appeals in admiralty cases, shall be printed on white writing paper, with a margin on the outer edge of the leaf not less than two inches wide. The printed page, exclusive of any marginal note or reference, shall be seven inches long, and three and a half inches wide. The folios, numbering from the commencement to the end of the papers, shall be printed on the outer margin of the printed page. But the court or either judge thereof, may, before the papers are printed, and at least ten days before the time for which the cause is noticed, or is to be noticed for hearing, by written order, dispense with the printing of papers as aforesaid, a copy of which order shall be served on the attorneys of the parties to the suit interested in such hearing, at least ten days before the day appointed for such hearing.

[See Rule without number adopted June 27th, 1871, p. 631, and considered as an amendment to this Rule.]

Rule 12.

OCTOBER TERM, 1864.

No cause shall be noticed for trial before the jury, or for

hearing, upon pleadings and proofs, or upon a case or bill of exceptions, at the adjourned term in January, in the city of Albany, without leave of the court therefor, granted at the previous stated term. But all causes may be noticed for trial or hearing at the adjourned Circuit, to be held on the third Tuesday in March, in the city of Utica, the same as at the stated term.

Rule 13.

MARCH TERM, 1868.

In order to assimilate the practice of this court to the practice of the State courts in respect to the noticing of causes for trial, and to allow either party to give notice of, and bring on the trial of a cause: It is hereby ordered that the following be added to the general rule of this court, adopted in October Term, 1841 (which provides that "In cases not provided for by the rules of this court, the rules of the District Court for the Northern District of New York, so far as the same are in their nature applicable, are to be considered as Rules of this Court"), the following, viz: And a party defendant or claimant, as well as the opposite party, may notice any issue of fact for trial and bring on the trial thereof in pursuance of such notice.

See Rule 5 of the Circuit Court of this District, p. 626.

Rule 14.

MARCH TERM, 1868.

The following order, made by the presiding judge, has been regarded as having all the force of a standing rule of court, and is as follows:

The proctors in the Circuit Court in admiralty appeals must each procure from the clerk of the Circuit Court a certified copy of the apostles, which includes all the papers returned from the District Court, and that the appellant must also procure a certified copy for the court.

RULES REGULATING APPEALS FROM THE DISTRICT COURT.

[These Rules, numbered from 15 to 20 inclusive, were adopted at June Term, 1848.]

Rule 15.

The transcript to be sent to this court, on appeal thereto

from a sentence or decree of the District Court, may be certified by the clerk of the latter court, under his hand and the seal of the court.

Rule 16.

Eight days' notice of hearing on appeal shall in all cases be given by the service thereof on the adverse party, or on his proctor.

Rule 17.

When an appeal from a decree of the District Court is interposed twenty days before the next stated session of this court, it may be noticed for hearing at such session by either party.

Rule 18.

When an appeal from a decree of the District Court is interposed less than twenty days before the next stated session of this court, the appellee may, at his option, notice the cause for hearing at such session, on the first or other day thereof; or have the cause continued until the next stated session.

Rule 19.

Transcripts of the depositions taken in any cause, in the District Court, according to law—whether *de bene esse* under the acts of Congress, or on commission—and read at the hearing of the cause in that court, may be transmitted to this court on appeal, and read by either party as evidence at the hearing of the cause in this court.

Rule 20.

A copy of the notes taken by the judge, or under his direction by the Clerk of the District Court, of the evidence of witnesses examined orally therein, shall be certified and transmitted to this court on appeal, along with the transcript of the record and other proceedings in the cause, and shall be admitted to prove the evidence given by such witnesses; but nothing herein contained shall be construed to abridge the right of the parties to re-examine such witnesses in this court, if they shall see fit to do so.

MISCELLANEOUS RULES.

[Adopted at the dates placed at the head of each respectively.]

Rule without number.

JANUARY TERM, 1870.

It is hereby ordered, that so much of the General Rules of this court as provides for the drawing of grand or petit jurors from the county of Rensselaer, be, and the same is hereby repealed; and that hereafter all grand jurors, and all petit jurors, for the terms of this court appointed to be held in the city of Albany, shall be drawn from the county of Albany, as is now provided in respect to the grand and petit jurors, required to be drawn from the county of Albany, under existing General Rules.

[NOTE.—In the office of the Clerk of the Circuit Court this Rule has never been numbered separately, but is considered an amendment to Rule 3, p. 626.]

Rule without number.

JUNE 27th, 1871.

On the hearing of appeals in admiralty the appellants shall furnish to the court a printed copy of the apostles certified by the clerk of this court, unless by special order of the court, obtained before the hearing, such printing or some part thereof, shall be dispensed with.

[NOTE.—In the office of the Clerk of the Circuit Court this Rule has never been numbered separately, but is considered as an amendment to Rule 11, p. 628.]

Rule 21.

IN EQUITY, MARCH 29th, 1876.

After the appearance of a defendant, the service of notices and also of motion papers upon such defendant or upon the complainant, except papers to bring a party into contempt, may hereafter be made by mail when the person making the service and the person on whom it is to be made reside in different places within this State, between which there is a regular communication by mail. In case of such service, the notice or other paper to be served must be deposited in the Post Office at the residence of the person making the service, inclosed in an envelope, addressed to the person on whom it is to be served,

at his place of residence, and the full postage prepaid. When the service is by mail, under this rule, it shall be double the time required in cases of personal service, except notice of a motion, which may be made ten days before the time appointed therefor, and except service of a notice of trial and final hearing, which may be made sixteen days before the term at which the trial or final hearing is to be had, including the day of service.

Rule 22.

JUNE 28th, 1876.

In actions at law a consent to a reference of the whole issue must likewise contain a provision that judgment shall not be entered until after ten days' notice of the filing of the report of the referee and of the judgment proposed to be entered thereon. After a reference, at any time before the entry of judgment, either party may move for a new trial upon a case or exceptions, and if any such motion be denied the decision of the motion and of the questions involved in it may be entered of record as if it had been a ruling made upon a trial by the Judge without a jury, and excepted to in like manner. When a motion for a new trial is intended to be made, the Court may extend the time for entering judgment, upon the application of the moving party, and may stay all other proceedings until the decision of the motion.

Rule 23.

MARCH 21st, 1877.

All pleadings filed, served, or for the use of the Court shall be folioed, and the folios, numbering from the commencement to the end of the papers, shall be marked on the margin of the page, and the Clerk must refuse to file any pleading not thus folioed.

Rule 24.

MAY 1st, 1877.

[Has relation to Reviews in Bankruptcy, and is not printed here.]

Rule 25.

JUNE 8th, 1878.

No warrant of arrest shall be issued by a Commissioner of the Circuit Court, in a criminal case, unless such warrant is

applied for by the District Attorney, or by one of his regularly appointed assistants, in person, or by the authority of such District Attorney or assistant, produced in writing to the Commissioner, or by a Collector of Internal Revenue, or by his authority, produced in writing to the Commissioner, except that, in an extraordinary case, such warrant may be issued on other application, provided that the commissioner shall assume the responsibility of giving reasons satisfactory to the court for issuing the warrant in such extraordinary case. No account of any Commissioner for issuing a warrant in any other case will be approved by a judge; and every account shall be accompanied by an affidavit of the Commissioner, showing by whom each warrant was applied for, and on what authority, and, if the case was such an extraordinary case, what were the reasons for issuing the warrant.

Rule without number.

OCTOBER 15th, 1879.

Harvey D. Talcott, of the city of Utica, Counsellor at Law, is hereby designated and appointed a Commissioner for the selection of jurors in and for the Northern District of New York, under the provisions of section 2 of an Act of Congress "making appropriations for certain judicial expenses of the Government for the fiscal year ending June 30th, 1880, and for other purposes," approved June 30th, 1879, with all the powers incident to the office created by said Act.

[This has never been considered as a Rule of practice in the same sense as the preceding Rules, but as an appointment in the same category as that of Clerks and United States Commissioners.]

Rule without number.

OCTOBER 15th, 1879.

Suitable boxes will be provided by the Marshal and delivered to the Clerk, for the safe-keeping of the names of persons to be selected as eligible to serve as grand and petit jurors. One said box shall be provided and designated for each of the several counties within the District, where stated terms of the Court are required by law to be held. On the first Tuesday of April, 1880, and annually on that day thereafter, the Clerk

and the Commissioner of Jurors shall select the names of at least four hundred persons for each of said counties, qualified to serve as grand and petit jurors, residents of the county, selected without reference to party affiliations. Each name shall be written on a separate ballot, with the person's place of residence. The first name shall be selected and deposited in the box by the Clerk, and thereafter the Commissioner and the Clerk shall alternately select and deposit a name in the box, until the required number shall be completed. If, at any time, less than three hundred names remain in the box, the Clerk and the Commissioner shall replenish the quota in the manner aforesaid. The boxes shall be locked and retained by the Clerk, and the key shall be kept by the Commissioner. The names of all persons who may be required to serve as grand or petit jurors at any term of this Court shall be drawn publicly by the Clerk from the box for the county in which the term is to be held, and at the close of such term, the ballots containing the names of persons who actually served as jurors, or who proved to be ineligible as jurors, shall be destroyed by the Clerk. The Clerk shall post upon the outer door of the Clerk's office notice of the time and place of drawing jurors, at least ten days prior to the drawing, except when jurors are summoned during a session of the Court. All rules inconsistent with this rule are hereby abrogated.

[See Rule 27, p. 635, amending this Rule. The Clerk of the Court states that this Rule and said Rule 27 have for convenience been practically considered as one Rule.]

Rule 26.

It is hereby ordered that hereafter, to entitle any cause to be placed on the calendar of this Court, for trial or hearing, a note of issue, stating the date when issue was joined, and the nature of the issue, together with the names and residences of the attorneys for the respective parties, shall be filed with the Clerk of this Court at least eight days before the first day of the term.

Rule without number.

MARCH 23d, 1881.

Harvey D. Talcott, Commissioner of Jurors of this Court, having removed out of this District and having presented to

the Court his resignation of said office, *Ordered*, that said resignation be and it is hereby accepted, to take effect immediately.

[Not considered as a practice Rule, but as a Rule of appointment.]

Rule without number.

MARCH 23d, 1881.

Charles A. Doolittle, of the city of Utica, Counsellor at Law, is hereby designated and appointed a Commissioner for the selection of Jurors, in and for the Northern District of New York, under the provisions of section 2 of An Act of Congress "making appropriations for certain judicial expenses for the Government, for the fiscal year ending June 30th, 1880, and for other purposes," approved June 30th, 1879, with all the powers incident to the office created by said Act. This appointment is made in the place and stead of Harvey D. Talcott, resigned.

[Not considered as a practice Rule, but as a Rule of appointment.]

Rule without number.

JUNE 27th, 1882.

A term of this Court having been appointed by law to be held in the City of Syracuse, in the County of Onondaga, on the third Tuesday of November in each year, it is *Ordered*, that the Clerk of this Court and the Commissioner of Jurors, on or before the first day of October, 1882, select the names of at least four hundred jurors, residents of Onondaga County, qualified to serve as grand and petit jurors, in the manner provided by the general Rule of this Court regulating the selection and drawing of jurors to serve in this Court; and that thereafter names of persons to serve as grand and petit jurors at said term shall be selected at the time and in the manner provided in said Rule. It is further ordered, that the Marshal prepare a suitable jury box for Onondaga County.

[This Rule is practically incorporated in Rule 27, p 635.]

Rule 27.

MARCH 21st, 1883.

The Rule heretofore adopted regulating the selection and drawing of jurors to serve in this Court is hereby amended so as to read as follows: .

“Suitable boxes will be provided by the Marshal and delivered to the Clerk for the safe-keeping of the names of persons to be selected as eligible to serve as grand and petit jurors. One such box shall be provided and designated for each of the several counties within the district where stated terms of the Court are required by law to be held. Before the first Tuesday in April and the first Tuesday in May, in each year, the Clerk of the Court and the Commissioner of Jurors shall select the names of not less than four hundred persons, from the residents of each of said counties in which a stated term of this Court is required by law to be held, qualified to serve as grand and petit jurors. Such names shall be selected without reference to party affiliations. No person shall be eligible to serve as a grand or petit juror at any term of this Court, unless he is at the time a resident of the county in which such term is held. The name of each person so selected shall be written upon a separate ballot, with his place of residence and occupation. The first name shall be selected by the Clerk and deposited by him in the box designated for the proper county, and the second name shall be selected and deposited by the Commissioner of Jurors; and thereafter the Clerk and the Commissioner of Jurors shall alternately select and deposit a name in the box until the required number shall be completed. If at any time less than three hundred names remain in the box, the Clerk and Commissioner of Jurors shall replenish the quota in the manner aforesaid. This provision, however, shall not be deemed to have any reference to the annual filling of the boxes for the several counties, which must contain, on the first Tuesday in May of each year, not less than four hundred names. The several boxes shall be locked and retained in the custody of the Clerk, and the keys shall be kept by the Commissioner of Jurors. The names of all persons who may be required to serve as grand or petit jurors at any term of this Court shall be drawn publicly by the Clerk from the box for the county in which such term is to be held, and at the close of such term the ballots containing the names of persons who actually served as jurors, or who proved to be ineligible to serve as jurors, shall be destroyed by the Clerk. The Clerk shall post on the outer door of the Clerk’s office notice of the time and place for draw-

ing jurors, at least ten days prior to the drawing, except when jurors are summoned during a session of the Court."

All Rules inconsistent with this Rule are hereby abrogated.

Rule without number.

MARCH 21st, 1883.

Whereas, Charles A. Doolittle has tendered his resignation as United States Commissioner of Jurors, for the United States Circuit Court for the Northern District of New York. It is *Ordered*, that the said resignation be and the same is hereby accepted, and it is further ordered that William Townsend, Counsellor at Law, of the City of Utica, be and he is hereby appointed as such Commissioner.

[Not considered as a Rule of practice, but as a Rule of appointment.]

Rule 28.

OCTOBER 9th, 1883.

On filing the written consent of all the attorneys for the parties, orders for discontinuance, extensions of time and substitutions of attorneys, reciting such consent, may hereafter be entered by the Clerk, in all cases, without the special direction of the Judge.

Rule 29.

JUNE 9th, 1884.

The appellant, in appeals, the plaintiff in error in writs of error, the excepting party in exceptions to master's reports, and the moving party, on motions for a new trial and the argument of demurrers, shall cause the papers to be printed, and such papers shall include all the papers necessary for the proper presentation of the case on both sides. In all other cases in which printing of papers is required, each party shall cause to be printed the pleadings, proofs and papers filed on his behalf. At the beginning of the argument each party shall furnish his adversary three copies of his printed points, and, at least eight days before the argument, three printed copies of all other papers shall be furnished by the party printing the same to the adverse party. A party recovering costs shall be allowed his disbursements for the printing required of him by this rule.

XI.

RULES.

NORTHERN DISTRICT OF NEW YORK.

DISTRICT COURT.

JUDGE AND OFFICERS
OF THE
DISTRICT COURT OF THE UNITED STATES
FOR THE
NORTHERN DISTRICT OF NEW YORK.

ALFRED C. COXE—District Judge.
Utica, Oneida Co., New York.

MARTIN I. TOWNSEND—United States Attorney.
Troy, Rensselaer Co., New York.

United States Attorney's Office, at Troy, Rensselaer Co., New York.

CHARLES B. GERMAIN—Clerk District Court.
Buffalo, Erie Co., New York.

Clerk's Office in the Post Office Building at Buffalo, Erie Co., New York.

C. D. MACDOUGALL—United States Marshal.
Rochester, Monroe Co., New York.

Marshal's Office, at Rochester, Monroe Co., New York.

Court Rooms in Buffalo (Erie Co.), Utica (Oneida Co.), and Albany (Albany Co.), are in the Post Office Buildings of said cities respectively, and in Auburn (Cayuga Co.) and Rochester (Monroe Co.), in the Court Houses respectively.

District Courts are held at Albany on the 3d Tuesday in January; at Utica on the 3d Tuesday in March; at Rochester on the 2d Tuesday in May; at Buffalo on the 3d Tuesday in September; at Auburn on the 3d Tuesday in November, and in the discretion of the Judge one term annually at such time and place as he may appoint within the counties of Onondaga, Saint Lawrence, Clinton, Jefferson, Oswego and Franklin.

For FEDERAL STATUTES especially relating to this Court, see—

Respecting the PRACTICE in the DISTRICT COURTS generally, their power to make Rules, etc., pp. 353 to 355.

Respecting FEES, etc., pp. 357 to 372.

Respecting the JURISDICTION of this Court, etc., p. 375.

Respecting SESSIONS, etc., pp. 379 and 387.

RULES
OF THE
DISTRICT COURT OF THE UNITED STATES
FOR THE
NORTHERN DISTRICT OF NEW YORK.

GENERAL RULES.

Rule 1.

The clerk of this court shall reside and keep his office at Buffalo until otherwise ordered by the court.

Rule 2.

Proctors of any circuit or district court of the United States, attorneys of the supreme court, and solicitors of the court of chancery of the State of New York, may, on motion in open court, or on presentation of their licenses to the clerk in vacation, be admitted attorneys and proctors of this court; and counsellors and advocates of any circuit or district courts, and counsellors of the said supreme court and court of chancery may, in like manner, be admitted counsellors and advocates of this court, of course, on taking the oath or affirmation prescribed by the third rule of this court.

Rule 3.

All persons admitted to practise in this court shall take either an oath or affirmation of the tenor following, viz. : I do solemnly swear (or affirm, as the case may be) that I will demean myself as attorney (or counsellor, solicitor,

proctor or advocate, as the case may be), of this court, uprightly and according to law, and that I will support the constitution of the United States.

Rule 4.

Every attorney, proctor and solicitor of this court, who does not reside in Utica, shall have an agent residing there. But if such attorney, proctor or solicitor has an agent in the supreme court of the state residing there, he shall be considered the agent of such attorney, proctor or solicitor in this court. The appointment of agents in this court shall be in writing, signed by the principal, and filed in the office of the clerk, who shall keep a catalogue of the appointments filed, with the names of the attorneys alphabetically arranged ; and no person shall be agent unless he is an attorney of this court or of the supreme court of the state.

[This Rule is in practice now obsolete and not in force.]

Rule 5.

When the attorneys, proctors or solicitors of the adverse parties do not reside within forty miles of each other, service may be made on the agent.

Rule 6.

If the attorney, proctor or solicitor, not resident in Utica, has no agent there, either in the supreme court of the state or in this court, service of all papers and notices may be made as to him, by affixing the same in a conspicuous place in the office of the clerk of this court.

[This Rule is in practice now obsolete and not in force.]

Rule 7.

When the service is on the agent, or is made by affixing the notice or paper in the clerk's office, it must be double the time of service required where the service is on the attorney, proctor or solicitor.

Rule 8.

All notices shall be in writing, and shall be served on the attorney, proctor or solicitor in the cause, or his agent, or by

affixing in the clerk's office, and not on the party; but where a party, who is also an attorney, proctor or solicitor of this court, shall prosecute or defend in person, all notices and other papers shall be served on him in like manner, except where the proceeding is by bill, in which case the bill shall be personally served; and where the object is to bring a party into contempt for disobeying any rule or order of court, the service shall be personal, unless otherwise ordered by the court.

Rule 9.

Notices and papers may be served on an attorney, solicitor or proctor, during his absence from his office, by leaving the same with his clerk in such office, or with a person having charge thereof; or, where no person is to be found in the office, by leaving the same between the hours of six in the morning and nine in the evening, in some suitable and conspicuous place in such office; or, if the office be not open so as to admit of service therein, then by leaving the same at the residence of the attorney, solicitor or proctor, with some person of suitable age and discretion.

Rule 10.

Where a party, other than an attorney, solicitor or proctor of this court, prosecutes or defends in person, the service of notices and papers may be on such party personally, or by putting the same into the post-office, directed to him or her at his place of residence. And no service of notices or papers in the ordinary proceedings in a cause, shall be necessary to be made on a defendant, who has not appeared therein, except where the defendant is returned imprisoned for want of bail, in which case a copy of the declaration and notice of the rule to plead shall be delivered to him, or to the sheriff or jailer, in whose custody he may be; and where an exception is entered to bail, and no notice of retainer of attorney to defend is given, notice of such exception shall be delivered to the sheriff or one of his deputies.

Rule 11.

Actions brought for the recovery of any debt, or for damages only, may be commenced, either—

1. By the issuing and service of a *capias ad respondendum* against persons not privileged from arrest ;
2. By summons against corporations ; or,
3. By filing in the office of the clerk of this court a declaration ; entering a rule in the book of common rules kept by such clerk, requiring the defendant to plead to such declaration, according to the practice of the court ; and serving a copy of such declaration and notice of such rule personally on the defendant ; which last mode of commencing an action may be adopted against any person, whether privileged from arrest or not.

Rule 12.

Upon due proof of the service of a declaration personally upon all the defendants in the cause, their appearance shall be entered by the clerk in the same manner as if they had indorsed their appearance on a *capias* ; and their default may be entered for not pleading, and the same proceedings may be had against them, in all respects, as if they had appeared.

Rule 13.

All process, if issued in term time, may be tested on any day in that term, and made returnable on any day in the same term, or in the next term ; and if issued in vacation, may be tested on any day in the preceding term, and be made returnable on any day in the next term ; and the term shall include every day from the commencement thereof until the final adjournment of the court, notwithstanding intermediate adjournments. And in case any stated term shall not be held, process may be tested on the day fixed by law for the commencement of such term.

Rule 14.

Upon the service of a *capias ad respondendum*, which does not require the defendant to be held to bail, he may indorse his appearance on such writ, or, if he refuse to do so, the officer may return the writ *personally served* ; and, in either case, it shall be the duty of the clerk, upon the return of the writ, to enter the appearance of the defendant upon whom the same

was served; and proceedings may thereupon be had against such defendant, as if he had actually appeared.

Rule 15.

When the *capias* has been served on the real party intended, the plaintiff, before or after its return, may amend, of course, any error in the name of the party inserted in the process, giving the defendant notice of such amendment.

Rule 16.

The court will not entertain a motion to set aside the process or proceedings in a cause on the ground of the misnomer of the party arrested; but will leave him to his remedy by a plea in abatement.

Rule 17.

No person shall be held to bail on a *capias ad respondendum*, unless the true cause of action be particularly expressed therein.

Rule 18.

The defendant may be held to bail in the cases and in the manner, and subject to the exceptions prescribed by the laws of this State; and bail may be put in, and the bail piece filed before the return day of the writ, for the purpose of surrendering the principal.

Rule 19.

In suits brought against persons accountable for public money, for the recovery thereof, in which the defendant is held to bail, it shall be the duty of the officer making the arrest, to exact a bail bond, conditioned for the appearance of the defendant on the return day of the writ, and unless it shall be made to appear that the plaintiff is not entitled by law to judgment at the return term, special bail shall be put in, and the bail, if excepted to, shall justify within two days after the return day of the writ, and before the adjournment of the court at the return term; otherwise the plaintiff may sue out process upon the bail bond, returnable on any day in the ensuing vacation, and upon the return of such process, served, may proceed to judgment and execution, as of the preceding term,

unless the defendant shall interpose a valid plea, verified by affidavit; and judgment may also be entered in the principal suit in the same manner as if special bail had been put in and perfected. But if, within the time herein allowed for putting in and perfecting special bail, the defendant shall, by making the oath or affirmation prescribed by law, entitle himself to a continuance until the next term, he shall have the same time allowed as is allowed in other cases after the return day of the writ, to put in and perfect such bail.

Rule 20.

In suits upon bonds for the payment of duties, and in suits brought against persons accountable for public money, for the recovery thereof, the declaration may be filed on the day upon which the writ is returnable and returned, and the district attorney may thereupon move in open court for judgment, and, no plea being interposed, may have final judgment entered *instantly*.

Rule 21.

When, in suits upon bonds for the payment of duties, and in suits brought against persons accountable for public money, for the recovery thereof, the defendant interposes a plea, the district attorney may have the cause placed on the calendar, at the same term, without other notice; and may bring the same to trial when called, unless the court shall continue the cause over at the instance of the defendant.

Rule 22.

In suits in which the United States are plaintiffs, or in which they are interested though not plaintiffs, if the bail to the arrest become special bail, the assignment of the bail bond and the acceptance thereof by the plaintiff's attorney shall not preclude him from excepting to the sufficiency of such special bail; and the marshal shall still be responsible for good bail, notwithstanding such assignment and acceptance of the bail bond.

Rule 23.

No plea shall be received in any suit instituted in this court

upon a bond executed to the United States for the payment of duties, or in any suit instituted upon a bail bond taken in consequence of such suit, unless such plea shall be accompanied by an affidavit of the truth of the matters in the plea contained.

In seizure cases, the defendant or claimant, instead of specially traversing any or all of the allegations of the information, may plead in substance "that the goods, articles and property, in the said information mentioned, did not, nor did any, or either of them, or any part thereof, become forfeited in manner and form, as is in the said information in that behalf alleged," or may otherwise directly and expressly deny, in similar general terms, the forfeiture alleged, which shall be deemed a good plea of the general issue, to such information, and shall put in issue all the allegations thereof.

When, in any such seizure case, the defendant or claimant shall, in his plea, make any affirmative allegation or allegations of matters of fact, by way of defence or answer to the information therein, the same shall be considered as denied by the district attorney and the United States, and no replication, either general or special, shall be required or allowed. Within twenty days after such plea shall be filed and served the United States may amend the information, as of course, and may add new allegations for the purpose of avoiding, explaining or adding to the new matter alleged in such plea, and the defendant or claimant shall have twenty days after the filing and service of such amended information to file and serve his plea to the same.

Rule 24.

The time for putting in special bail, and giving notice thereof, shall be twenty days from the day on which the process shall be returnable; the time for exception and notice thereof, twenty days from the day of notice of bail; the time of justification, eight days from the day of notice of exception; and notice of justification shall be given four days before the day of justification. Bail may justify in open court, or before the judge at chambers, or before the clerk, with the right of appeal in the last case to the court. or judge at chambers.

Rule 25.

The following shall be the terms on which proceedings shall be stayed in suits on bail bonds:

1. Putting in and perfecting bail above, and paying the costs of the suit on the bail bond, and of the motion for relief.

2. Pleading issuably, and consenting to place the cause on the calendar, and to proceed to trial at the same term; or in case of refusal so to plead and consent, the entry of a judgment on the bail bond to stand as security.

Rule 26.

Common rules (or rules of course, without special cause shown), and rules by consent may be entered in the proper book in the clerk's office in term or in vacation; the day of entering the same being noted therein; and the party may enter such rule as he may conceive himself entitled to, of course, but at his peril.

Rule 27.

The defendant, having perfected his appearance, may at any time thereafter take a rule against the plaintiff to declare in twenty days after service of notice of the rule, or that judgment of discontinuance be entered against him.

Rule 28.

The rule to plead, to answer, or to join in demurrer, shall be a rule of twenty days; but the plaintiff shall not be held to accept a plea in abatement after four days from the day of service of the notice of the rule to plead, and a copy of the declaration; and the rule to join the demurrer to such plea shall be a rule of four days only.

Rule 29.

When there shall have been judgment of *respondeas ouster*, on a demurrer to a plea in abatement, and the plaintiff shall have served the defendant with a notice of such judgment, the defendant shall plead within four days from the day of service of such notice, or his default in not pleading may be entered.

Rule 30.

The party in whose favor a default has been entered may, on any day afterwards in term, have a rule entered for such judgment as is to be rendered by law by reason of such result. In all actions sounding in damages, after judgment for the plaintiff by default or on demurrer, the damages shall be assessed on a writ of inquiry, or by the clerk, as the case may be.

Rule 31.

Fourteen days' notice of trial, and six days' notice of countermand, shall be given in all cases. A party defendant or claimant, as well as the opposite party, may notice any issue of fact for trial, and bring on the trial thereof in pursuance of such notice. The like notice of assessment and of inquiry (where such notices are necessary) shall also be given, and may be given at any time after default entered, and for any day in term; but no notice of assessment or of inquiry shall be required, except when the defendant shall have appeared by attorney, or shall have given notice of his intention to appear and defend the action.

Rule 32.

Rules for final judgment, unless cause to the contrary be shown, shall become absolute upon the expiration of four days in term, after the entry thereof, or, if there shall not be so many days remaining in term, then upon the expiration of the term.

Rule 33.

When notice of retainer shall be received before the defendant's default in not pleading has been entered, a copy of the declaration and notice of the rule to plead (unless they shall have been served on the defendant personally) shall be served on the attorney retained, and the rule to plead shall be from the time of such service, and the service of all other pleadings, papers and notices, to be made after notice of retainer, shall be on the attorney retained.

Rule 34.

If the plaintiff shall make default in declaring, then the de-

fendant, or if either party shall make default in answering, then the opposite party, may have the default entered in the book of common rules; but where the previous service of a notice of a rule, copy of a pleading, or of any other matter shall be requisite, the default shall not be entered unless an affidavit of such service shall be filed; neither shall it be entered until special bail, if required, is put in, and, if excepted to, has justified.

Rule 35.

The defendant's default being duly entered, the plaintiff shall not be bound afterwards to accept a plea, unless the defendant, as soon as he shall know that the default has been entered, shall file an affidavit of merits, and serve a copy, pay or tender the amount of the costs of default, plead issuably, and consent to go to trial at the next term.

Rule 36.

The plaintiff may, at any time before the default for not replying shall be entered, if the plea shall be a special plea, or a plea in abatement, or within twenty days after service of a copy of the plea, if it shall be the general issue, amend his declaration. After plea, either party may, before default for not answering shall be entered, amend the pleading to be answered; and, where there shall be a demurrer to a declaration or other pleading, such pleading may be amended at any time before the default for not joining in demurrer shall be entered. The respective parties may amend under this rule of course, and without costs, but shall not be entitled so to amend more than once.

This rule shall be construed to allow amendments to be made by adding new counts or pleas, but not so as to allow of any amendment to a plea in abatement.

Rule 37.

In order to amend, a rule for that purpose shall be entered in the clerk's office, which, however, need not specify the amendments; but a copy of the amended pleading shall be filed; and the rule to plead or answer, if notice thereof shall have been given, shall be from the day of the service of a copy of the pleading as amended and on file.

Rule 38.

If the defendant shall plead the general issue, the cause shall be at issue, unless the plaintiff shall, within twenty days thereafter, amend his declaration ; and if either party shall, in pleading in any degree after the plea, tender an issue to the country, and if the opposite party shall not demur to the pleading within twenty days after service of a copy thereof, the cause shall in each of these cases be deemed at issue.

Rule 39.

Applications made by a party in pursuance of the fifteenth section of the judicial act, to require the opposite party to produce books and writings, must be made upon petition, verified by affidavit, setting forth plainly the facts and circumstances upon which the application is founded ; and in such petition, or in the affidavit thereunto subjoined, it must be stated that the books or writings, the production whereof is sought, are not in the possession nor under the control of the petitioner, and that he is advised by his counsel, and verily believes, that the production of the books or writings mentioned in such petition is necessary to enable him safely to proceed in the prosecution or defence (as the case may be) of his suit.

Rule 40.

The petition may be presented to the judge of this court in vacation, as well as to the court in term ; and the order to be made thereon shall be that the party against whom the application is made shall produce the books or writings mentioned in the petition, or show cause, on the day and at the place to be therein specified, why the prayer of such petition should not be granted.

Rule 41.

Such order shall also specify the manner in which such books or writings shall be produced, and may require the party either to produce and deposit the same with the clerk of this court, or to deliver to the petitioner or his attorney copies thereof, verified by oath.

Rule 42.

A copy of such petition, together with a copy of the order

made thereon, shall be served upon the attorney of the party against whom the order is directed a reasonable time, to be prescribed in the order, before the day therein prescribed for showing cause.

Rule 43.

Commissions to take the examination of witnesses, resident without the district, may issue by order of the court in term, or of the judge thereof in vacation, in the manner, and subject to the regulations, so far as the same are applicable, *mutatis mutandis*, prescribed by the Revised Statutes of this state.

Rule 44.

Such commissions may also be issued by consent. But the agreement for that purpose shall be in writing, and filed in the clerk's office; and the clerk shall, in such case, make an indorsement upon the commission, under his signature, in the following form: "Allowed by consent of parties."

Rule 45.

When a cause is noticed for trial, a notice thereof, with a note of the issue and of the pleadings, and the attorneys' names, shall be delivered to the clerk on or before the Thursday preceding term; the clerk shall, as early as the following day, have the calendar of causes to be tried made up, arranging them according to the dates of their issues; and no cause shall be put upon the calendar without the special order of the court, unless the note of issue shall be furnished, as is hereby required.

Rule 46.

For the purpose of summoning and returning jurors to serve upon trials of issues in this court at the terms thereof appointed by law, or which may be appointed by the special order of the judge thereof, to be held in the village of Utica, the clerk of this court, together with the marshal, or his deputy, resident in Utica, shall, at least fourteen days previous to every such term, repair to the office of the clerk of the county of Oneida, where the clerk of this court, in presence and with the assistance of the said clerk of the county of Oneida, and of the mar-

shal or his said deputy, shall proceed to draw out of the box kept in the said office, containing the names of the jurors of the said county, thirty-six slips of paper; and the clerk of this court shall immediately thereafter make out and certify, under his hand, a list of the jurors so drawn as aforesaid, with their respective additions and places of abode, and deliver the same to the said marshal, or his said deputy, who shall summon the persons named in such list to serve as jurors.

And for the purpose of summoning and returning jurors to serve upon the trial of issues in this court, at the terms thereof appointed by law, or which may be appointed by the special order of the judge thereof, to be held in the city of Albany, the marshal, or his deputy resident in the said city, shall, at least fourteen days previous to every such term, repair, from term to term, to the office of the clerk of the city and county of Albany, where, in the presence and with the assistance of such clerk, the marshal or his said deputy shall proceed to draw out of the box kept in the said office, containing the names of the jurors of such county, thirty-six slips of paper, and shall immediately thereafter make out a list of the jurors so drawn as aforesaid, with their respective additions and places of abode, and shall request such clerk to certify the same, under his hand, and, in case of his refusal so to do, shall certify the same under his own hand, and thereupon proceed to summon the persons named in such list to serve as jurors; and, in like manner, shall jurors, to serve at the terms of the court appointed by law, or by special order, to be held at other places, be drawn, summoned and returned by the marshal or one of his deputies; and, in these cases, the jurors shall be taken from the counties respectively in which the term of the court at which they are to serve is to be held. At least six days' notice of the drawing of every jury shall be given by the clerk of this court, by affixing such notice upon the outer door of the house where the court for which such jury is to be drawn is to be held.

The jurors to serve at any court shall be summoned at least six days previous to the sitting thereof, by giving personal notice to each person, or by leaving a written notice at his place of residence, with some person of proper age. The marshal or

his deputy, by whom the jurors are summoned, shall return the list of jurors to the court at the opening thereof, specifying those who were summoned, and the manner in which each person was notified.

It shall be the duty of the marshal, or of his deputy, having possession of the same, to furnish any person applying therefor, and paying therefor a fee of twenty-five cents, a copy of the list of jurors drawn to attend any court.

Rule 47.

Whenever it shall be intended to move to set aside a nonsuit or verdict, except for irregularity, a case shall be prepared by the party intending to make the motion, and a copy thereof shall be served within four days after the trial on the opposite party, who may, within four days thereafter, prepare amendments thereto, and serve a copy on the party who prepared the case, who may then, within four days thereafter, serve the opposite party with notice to appear, within a convenient time, before the judge, to have the case and amendments settled. The judge shall thereupon correct and settle the case, as he shall deem to consist with the truth of the facts. The time for settling the case must be specified in the notice, and shall be not less than four, nor more than twenty days, after service of such notice.

Rule 48.

If the party omit to make a case within the time above limited, he shall be deemed to have waived his right thereto; and when a case is made and the parties shall omit, within the several times above limited, the one party to propose amendments, and the other to notify an appearance before the judge, they shall respectively be deemed, the former to have agreed to the case as prepared, and the latter to have agreed to the amendments as proposed. If judgment has been rendered upon a verdict, the party intending to move for a new trial shall give four days' notice in writing to the opposite party of any motion to stay execution thereon, and also of the petition intended to be filed pursuant to the 18th section of the act of September 24th, 1789, unless a shorter time be allowed by the court or the judges.

Rule 49.

General verdicts may be taken subject to the opinion of the court on a case to be made by the party in whose favor the verdict is taken, containing all the evidence given at the trial, the case to be prepared and settled in the manner prescribed in the foregoing rules.

Rule 50.

In cases of exceptions taken, demurrer to evidence or special verdict, the party shall not be required to prepare at the trial his bill of exceptions, demurrer, statement of evidence or special case, or to put in form the special verdict, but shall merely reduce such exceptions to writing, or make a minute to the demurrer to the evidence, and of the facts found specially by the jury, as the case may happen to be, and deliver it to the judge, or the judge will himself note the points, as he may direct; and the bill, demurrer or special verdict, shall afterwards be drawn up, amended and settled within such times and under the same regulations as are made with respect to cases.

Rule 51.

A bill of exceptions may, before judgment, be used instead of a case on motion for a new trial, and notice of such motion, together with an order to stay proceedings, and a copy of such bill of exceptions shall operate to stay all further proceedings until the decision of the court: *Provided*, that proceedings shall not be longer stayed than if a case had been made.

Rule 52.

All questions for argument and all motions shall be brought before the court on motion for that purpose, and, if the opposite party shall not appear to oppose, the party making the motion shall be entitled to the rule or judgment moved for, on proof of due service of the notice and papers required to be served by him.

Rule 53.

Enumerated motions are motions in arrest of judgment; to bring on to be argued questions arising on special verdict, case reserved at the trial, case agreed between the parties without

trial; demurrer to evidence or pleadings; and all motions to set aside nonsuit, verdict or inquisition, for other cause than irregularity only.

Rule 54.

Enumerated motions shall be noticed for the first day in term, by a notice of at least eight days, and may be noticed and brought on by either party. When such notice is given by the party whose duty it is to furnish the case, demurrer-books, or other papers on which the motion is founded, such notice shall be accompanied with copies of such papers.

Rule 55.

Enumerated motions set down for argument shall be placed on the calendar after the causes noticed for trial, and the same rules relative to the furnishing of the clerk with notes of issue, &c., and to the making up of the calendar in cases of issues of fact, shall be applicable to them also. The date of the issue shall be, in case of motion in arrest of judgment, of special verdict, case reserved at the trial, motion to set aside verdict or nonsuit, bill of exceptions, or demurrer to evidence, the day on which the trial took place; and in case of demurrer to pleadings, the day on which the joinder in demurrer was received.

Rule 56.

The party bringing on the argument shall, at the opening thereof, furnish the judge with a copy of the case, demurrer to evidence, special verdict, or, where the motion is for a new trial upon newly discovered evidence, with copies of the affidavits and other papers, if any, on which the motion is founded or opposed; or if the motion be in arrest of judgment, with copies of the pleadings, or so much thereof as may be necessary. A note of the points or questions intended to be raised, by each of the respective parties shall also, at the same time, be furnished to the judge and to the opposite party.

Rule 57.

Whenever an order to stay proceedings shall be granted to enable the party to make a special motion, service of such order,

with copies of the affidavits upon which it is granted and notice of the motion, shall operate as a stay of proceedings until the further order of the court. But if the party shall neglect to bring on the motion to be heard during the term, according to his notice, the proceedings shall not be longer stayed, and he shall be liable to pay the costs of attending to resist the motion.

Rule 58.

No private agreement or consent between the parties or their attorneys in respect to the proceedings in a cause shall be binding, unless the same shall be reduced to the form of a rule by consent, and entered accordingly in the book of common rules, or unless the evidence thereof shall be in writing, subscribed by the party, or his attorney, against whom the same shall be alleged.

Rule 59.

Non-enumerated motions shall be noticed for the first day of term, by a notice of at least eight days, accompanied with copies of the affidavits and papers on which the same shall be made; and notice shall not be for a later day in term, unless sufficient cause be shown in the affidavits served for not giving notice for the first day.

Rule 60.

When a party shall, before motion, offer to comply fully with the terms of the order which it is the practice of the court upon motion in like cases to make, and shall also pay the costs, if any, on the same being thereupon taxed and demanded, he shall be entitled to costs from the opposite party, if the motion shall be afterwards made.

Rule 61.

In all cases where a motion shall be granted on payment of costs, or on the performance of any condition, or where the order shall require such payment or performance, the party whose duty it shall be to comply therewith, shall have twenty days for that purpose, unless otherwise directed in the order. And where, by the terms of any order, an act is directed to

be done *instantly*, it shall be understood to require such act to be performed within twenty-four hours.

Rule 62.

.Whenever the plaintiff shall have neglected to bring his cause to trial, according to the practice of the court, he may, if he have not before stipulated, tender a stipulation and offer to pay the costs to which the defendant is entitled, up to that time; and if the defendant shall afterwards move for judgment as in case of nonsuit, he shall pay costs to the plaintiff, except where the plaintiff shall, after demand, have refused to pay the costs as taxed.

Rule 63.

When on motion for judgment, as in case for nonsuit, the plaintiff shall be permitted to stipulate, he shall, within twenty days thereafter, tender a stipulation to the defendant, and shall pay the costs ordered to be paid thereon; and if the stipulation be not tendered, and the costs paid within that time, the defendant on filing an affidavit of such omission of tender and non-payment, may, after the expiration of twenty days, enter judgment as in case of nonsuit as of the preceding term.

Rule 64.

The provisions contained in Title 2d of Chapter 10th of Part 3d of the Revised Statutes of this State, relative to security for costs shall be taken and held to be rules of this court.

Rule 65.

To effect a surrender of bail, the bail or principal shall produce to the judge two certified copies of the bail piece, on one of which the judge will indorse a *committitur*, and on the other an order that the plaintiff show cause before him, on such day as he may designate, why the bail should not be exonerated.

Rule 66.

On due proof of the service of such order on the plaintiff or his attorney, and on proof by the certificate of the marshal or his deputy, to whose custody the defendant has been com-

mitted in virtue of such *committitur*, acknowledged before the judge by such officer, or proved by the oath of a subscribing witness thereto, if no sufficient cause to the contrary be shown, the judge will indorse an order on the second certified copy of the bail piece, that an *exoneretur* be entered. If the plaintiff, or his attorney, upon whom the rule to show cause is served, resides at the time of service more than one hundred miles from the place at which cause is to be shown, such rule shall be served eight days before the time specified therein for showing cause; in other cases four days shall be sufficient.

Rule 67.

Such certified copy shall be filed, and the clerk shall indorse thereon an *exoneretur*, and shall also enter in the register of bail the discharge of the bail.

Rule 68.

Whenever a bail bond shall be taken on the arrest of a defendant, the bail therein may surrender their principal, or he may surrender himself in exoneration of the bail, in the same manner, and with the like effect, as in the case of special bail, except that true copies of the bail bond, proved to be such by the affidavit of the marshal or his deputy, or of a subscribing witness, shall be used instead of certified copies of the bail piece.

Rule 69.

In case a defendant who has procured special bail in a suit in this court, shall be afterwards arrested in any other district, and committed to a jail, the use whereof has been ceded to the United States for the custody of prisoners, he may be surrendered at the request of his bail, and in pursuance of the act of Congress in such case made and provided, in the manner provided in the foregoing rules for ordinary cases.

Rule 70.

All moneys paid into court which any collector of customs is entitled by law to receive, shall, after deducting the costs, be paid over to him by the clerk, upon an order to be entered, of course, for that purpose.

Rule 71.

[This Rule originally designated the bank in which all moneys paid into court, which were required by law to be deposited in a branch bank of the United States, should be deposited. The Rule is virtually superseded by §§ 995 and 996 of the Revised Statutes (Second Edition), p. 186, under which the Secretary of the Treasury has designated several national banks in the Northern District of New York as United States depositories.]

Rule 72.

All checks for money so deposited, to be drawn out of the bank, shall be signed by the clerk, as clerk, and such check shall be written on the same paper which contains the order of the judge for that purpose.

Rule 73.

A book shall be kept by the clerk, in which he shall enter a full and particular account, under the title of each cause depending in the court, of all moneys paid into court in such cause, and of the payment thereof; and such book shall at all times be open to the inspection and examination of the judge of this court, the attorney of the United States, and the marshal of the district; and any particular account may also, upon request, be inspected by any person interested therein.

Rule 74.

All process issued by this court shall be of like form and effect with process issued in like cases by the supreme court of this State, unless otherwise directed by rule.

Rule 75.

The marshal, his deputies, and all other persons concerned in the service of any process of this court, are respectively prohibited from becoming bail in any suit depending in this court, unless for the purpose of surrendering the defendant, in which case the surrender shall be made within fourteen days after special bail shall have been put in.

Rule 76.

The bond required by law to be executed by the clerk of this court for the faithful performance of his duties as such, shall be recorded in his office, and immediately thereafter deposited in the Branch Bank of the United States in the village of Utica, subject to be delivered, upon the order of the judge, to such person as shall be designated in such order; and the marshal's bond shall be recorded and filed in the clerk's office.

Rule 77.

In causes wherein the marshal of the district or his deputy is a party in interest, all process shall be directed and delivered to the sheriff or under sheriff of the county of Oneida, for the time being, who is hereby appointed, *ex officio*, in pursuance of the act of Congress in such case made and provided, to serve and execute such process.

Rule 78.

[This Rule has been repealed.]

Rule 79.

The clerk may tax and certify bills of costs, and sign judgment records.

Rule 80.

On an indictment found by the grand jury, the district attorney may forthwith sue out a *capias* under the seal of the court, for the arrest of the person indicted.

Rule 81.

Where default is made by any party or witness, bound by recognizance in any criminal proceeding, the clerk shall immediately issue a *scire facias* thereon.

Rule 82.

Where a fine is imposed by the court on any person for any cause, and the party is not thereupon committed, and such fine is not discharged previously to the close of the term, the clerk shall issue to the marshal a warrant of execution, commanding

him to levy and make such fine of the goods and chattels, or, in default thereof, of the lands and tenements of the party.

Rule 83.

In all cases not provided for by the rules of this court, or by law, the practice of the supreme court of this State, as prescribed by the Revised Statutes of this State, and by the rules of the said court, shall regulate the practice of this court, so far as the same may be applicable.

Rule 84.

Persons summoned to serve as jurors in this court will be discharged or excused from serving therein, whenever by the law of this State, it would be the duty of the courts of the State to discharge or excuse such persons from serving therein.

See Act of Congress of July 20th, 1840, ch. 47, 5 Stat. at Large, 394, embodied in Revised Statutes (Second Edition), § 800, p. 150, virtually superseding this Rule.

Rule 85.

Any issue of fact, which, according to the Act of Congress of July 7, 1838, entitled "An act to increase and regulate the terms of the circuit and district courts for the northern district of the State of New York," would be triable at a term of the court required by law to be held in any one of the divisions of the said district into which it is divided by the said act, may be tried at a term of the court required to be held in any other of the said divisions of the said district, provided the adverse parties or their attorneys, by a stipulation in writing, signed by them and filed in the clerk's office, shall enter into an agreement to such effect.

DELIVERY OF PROPERTY UNDER SEIZURE, PENDENTE LITE.

Rule 86.

1. Applications for the delivery to the claimant of property, seized as forfeited under any law of the United States, may be made at any time after the service of the monition and warrant of arrest.

2. At least four days' notice of the application shall be given to the district attorney and to the collector of the collection district in which the seizure was made, accompanied by the service on each of them of a copy of the petition for delivery; unless the application be made in open court, when the district attorney and the collector are present; in which case no previous notice shall be necessary.

3. Unless a claim duly verified shall have already been interposed by the applicant, he shall show, at the time of his application, by his own oath or other evidence, that he is lawfully entitled to appear as claimant in the case.

4. The appraisers shall be sworn faithfully and fairly to appraise the property in question, and make a true report of the value thereof, according to the best of their understanding, without unnecessary delay.

5. Reasonable notice of the time and place appointed by the appraisers to make the appraisal shall be given to the district attorney, the collector and the claimant.

6. For the purpose of ascertaining the value of the property to be appraised, the appraisers may examine such persons on oath, and receive such affidavits, taken before one of the commissioners of this court (who are hereby authorized to take such affidavits), as they may think proper.

7. On the return of the appraisal to the court, or to the judge in vacation, accompanied by a certificate from the collector and naval officer (if there be one), that the duties on the property seized, if any be chargeable thereon, have been paid; and on satisfactory evidence that the expenses of the appraisal have been paid by the claimant; and, on the execution by the claimant of a bond, in conformity with the statutes of the United States in such case made and provided, before the court, the judge, or the clerk, an order will be granted for the delivery of the property to the claimant.

8. The appraisers shall severally be entitled to be paid, for their services in making an appraisal, three dollars a day for each day necessarily spent in the performance of such services.

9. But whenever, in any case, the value of the property seized shall be agreed upon between the collector and district

attorney in behalf of the United States and the claimant, and a certificate in writing, expressive of such agreement, shall be signed by them, and filed in the clerk's office, such valuation (in conformity with the practice of the court heretofore) shall have the same validity and effect as if it had been made and reported by appraisers duly appointed for that purpose.

SALE OF PERISHABLE PROPERTY.

Rule 87.

1. Application for the sale of perishable property seized as forfeited under any law of the United States, may be made either by the district attorney in behalf of the United States, or by the claimant, at any time after the service of the monition and warrant of arrest.

2. At least four days' notice of the application, when made by the claimant, shall be given to the district attorney, and to the collector within whose collection district the seizure was made, accompanied by the service of a copy of the petition for the decree or order of sale ; and a like notice shall be given to the claimant, if there be one, or to his proctor or attorney, when the application is made by the district attorney. But when the application is made in open court, and the proctor or attorney of the opposite party is present, no previous notice shall be necessary.

3. When the application is made by the claimant before a claim duly verified shall have been already interposed, he shall be required to show, at the time of his application, by his own oath, or other evidence, that he is lawfully entitled to appear as claimant in the case.

4. The place of sale, and the length of the notice of sale to be given by the marshal (which, unless otherwise specially directed, shall be given in the manner prescribed by the 90th section of the collection act of March 2, 1799, in cases of condemnation), will be determined by the court or the judge, in each case, according to its nature and circumstances, and prescribed in the order of sale.

5. When the application for an order of sale is resisted by the opposite party, and the propriety of such order appears

doubtful, surveyors will be appointed, preliminarily, to examine and report as to the condition of the property.

REMISSION OF FINES, PENALTIES, FORFEITURES, AND DISABILITIES.

Rule 88.

Preparatory to the presentation of a petition for the remission or mitigation of any fine, penalty, forfeiture or disability, a copy of such petition, together with a notice of the time and place of presenting the same, shall be served on the attorney of the United States, and another copy with the like notice on the person or persons claiming the fine, penalty or forfeiture, ten days before the time of presenting the petition.

Rule 89.

The petition, in addition to the other circumstances of the case, shall state whether any and what suit has been instituted, and what proceedings have been had for the recovery of the fine, penalty or forfeiture, up to the time of preferring the petition.

Rule 90.

The clerk, under the direction of the judge, shall prepare a statement of the facts relative to the case which appear upon the inquiry, and forthwith transmit the same, together with the petition, to the Secretary of the Treasury.

Rule 91.

The fees of the clerk shall be paid by the petitioner before the transmission of the petition and statement to the Secretary of the Treasury ; and where there are several petitioners or distinct claimants, not being partners, or several cases or importations embraced in one petition, the clerk shall be entitled to the same fees as if a distinct petition had been presented in each case.

Rule 92.

[This Rule related to marshal's fees for the custody of vessels, &c., under seizure in behalf of the United States. See Act of

Congress of February 26th, 1853, ch. 80, 10 Stat. at Large, 164, embraced within § 829 Revised Statutes (Second Edition), p. 155 (156), which is considered as virtually superseding the Rule.]

Rule 93.

The clerk is authorized to enter satisfaction of record of any judgment rendered in this court in behalf of the United States, on filing an acknowledgment of satisfaction of the same, duly made, by the district attorney.

Rule 94.

[This Rule prescribed the fees of practitioners and the clerk, and is not now in force. See Revised Statutes (Second Edition), ch. 16, p. 153.]

Rule 95.

Adopted DECEMBER 9th, 1863.

When a fine or penalty is paid into court, and the whole thereof shall belong to the United States, or one-half thereof shall belong to the government, and the other half thereof to any other party, the clerk shall, as soon thereafter as practicable, unless a stated term of the court shall then be in session, and then as soon as practicable after the end of such term, pay to the proper depositary the amount thereof belonging to the United States; and every person claiming any portion of such fine or penalty as the discoverer or informer, or prosecutor of the offender incurring such fine or penalty, shall, on or before the first day of the next stated term of the court, file with the clerk of the court his affidavit, and such other papers as he may think proper, showing his right to a moiety of such fine or penalty, which affidavit and papers shall be presented to the court by the clerk on the second day of such term.

Rule 96.

In cases under the act "to provide Internal Revenue," &c., the person claiming shall file with such affidavit and papers the written consent of the collector of the Internal Revenue for the district in which such fine or penalty was incurred; that a moiety shall be paid to such claimant, or shall show by

affidavit that a copy of such affidavit and papers had been served on such collector at least eight days before the commencement of such term.

Rule 97.

Adopted NOVEMBER 26th, 1867.

In all cases of seizure, where a bond shall have been executed and the property seized returned, in pursuance of the provisions of section forty-eight of the act of June thirtieth, eighteen hundred and sixty-four, entitled "An act to provide Internal Revenue to support the government, to pay interest on the public debt, and for other purposes," and acts amendatory thereof, before the filing of the information against the same, the information shall state the fact of the execution of such bond and the return of said property, and shall set forth in an appropriate form of pleading the substance, terms and conditions of such bond, and the names and residences of the parties executing the same.

Upon the filing of such an information the clerk shall insert in the process issued thereon to the marshal a condensed and brief general statement of the allegations so made in respect to such bond, including the names and residences of the parties executing the same, as stated in such information; and shall also insert a command to the marshal that he summon and give notice to the persons named as the parties executing such bond to appear at the return day of said process to answer the allegations of the information, and to show cause, if any they have, why such bond should not be enforced against them; which summons and notice shall be served by leaving a copy of such process with each of such parties, if he can be found within the district, and, if not, by leaving the same at the usual place of abode of such party, with some person of suitable age and discretion residing there, at least ten days previous to the day when such process shall be returnable; and such service of such summons and notice, or the publication thereof, as hereinafter provided, shall be sufficient notice of the pendency of the proceedings in court against the property so seized, and upon such bond.

In case the marshal shall be unable for any reason to effect a personal service of such process and summons upon such

parties, or either of them, or to serve the same at their usual place of abode, as above provided, the same shall be served by publishing a copy thereof three times, at least ten days previous to the day when such process shall be returnable, in each of the newspapers designated by the general rules of this court for the publication of notices in bankruptcy, required to be published within the county where such seizure was made.

In case any such bond shall be taken and property returned, after any information shall be filed against such property, but before the said property shall be seized or arrested by the marshal under the process of the court, such allegation in respect to such bond and return may be made by way of supplemental information, or information in the nature of a supplemental information, upon which like statement and commands may be inserted in the proper process to be issued to the marshal in such suit, and like service thereof shall be made, and like proceedings shall be had thereon.

The parties named in any information as having executed any such bond may appear and answer such information, and may defend the suit in which such process shall have been issued, and may contest the alleged forfeiture and their liability under such bond.

Rule 98.

Adopted MARCH 2d, 1869.

[See this Rule printed at page 684.]

Rule 99.

Adopted AUGUST 30th, 1869.

In order that the United States may be relieved from the payment of costs in cases in which an informer should be held liable for the same, and also in order to give to claimants and defendants their proper remedy against such informers, it is hereby provided that in all cases of seizure, and in all other cases prosecuted in the name of the United States, in which any prosecutor, informer or other person shall claim or intend to claim that any share of the penalty, forfeiture or recovery for which the suit in such case is prosecuted will belong to him, as an informer or prosecutor, the person so claiming such share shall, within fifteen days after the filing of the declaration or information therein, file with the clerk of this court a state-

ment in writing, setting forth that he claims to be the informer or prosecutor who is entitled to a share of the forfeiture, penalty or recovery for which such suit is brought: and no person shall be allowed any share of any penalty, forfeiture or recovery in any such suit who shall not have filed the statement hereinbefore required, in the manner and within the time aforesaid.

Rule 100.

Adopted AUGUST 30th, 1869.

In all such cases, and in all other cases civil or criminal, in which a moiety or other share of any penalty, forfeiture, fine or recovery is claimed by any informer or prosecutor, the claimant thereof shall serve a copy of his claim and also of his affidavit and all other papers intended to be used in support thereof, on the Attorney of the United States at least eight days before the commencement of the term at which the same shall be presented to the court for allowance; and the same shall be presented to the court on the morning of the first day of the term, in order that the same may be heard and determined. In case any such claimant was an officer or employee of the United States or was in any manner in the pay of the government or any officer thereof, at the time he received, obtained or gave the information upon which he bases his claims, or at any time within six months before he received, obtained or gave such information, he shall in his affidavit state the particulars in respect to such official position or employment or pay, and, in all other cases, he shall state that he was not at the time, or within six months before the time, when he received, obtained or gave such information, in any such official position, or employment or in the pay of the United States Government or of any officer thereof.

Rule 101.

Adopted AUGUST 30th, 1869.

Proceeding *in rem* for a forfeiture, and *in personam* for an offence, fine, penalty or debt, may be joined in one information, when having relation to the same transaction or transactions, cause or causes of forfeiture; and if not so joined the separate

suits prosecuted therefor may, on motion of any party in interest, be consolidated. If not so joined or consolidated the costs of only one of such suits will, under ordinary circumstances, be taxed against any informer, claimant or other party liable to costs therein.

Rule 102.

Adopted AUGUST 30th, 1869.

No party shall be held to bail on an information *in personam*, or in a suit brought to recover any penalty or forfeiture, without the mandate or order of the judge, except when bail is required by statute; and to obtain such mandate or order it must be shown, as cause therefor, that the defendant or respondent is a transient person, or that there is reason to believe that the defendant is about to depart out of the jurisdiction of the court.

Rule without number.

Adopted JULY 14th, 1858.

It is ordered that a *capias* be issued upon the application of the Attorney of the United States, in all cases of indictment pending in this Court, where the party is not in custody upon subsisting process, or is not upon bail, which *capias* shall be made returnable at the first term of the Court, at which the party may be tried, and that no *capias*, returnable at the same term, shall be issued to bring up a party already in custody, but he shall be brought up on the order of the Court, or District Attorney, without process, as directed by law.

Rule without number.

Adopted SEPTEMBER 9th, 1879.

Suitable boxes will be provided by the Marshal and delivered to the Clerk for the safe-keeping of the names of persons to be selected as eligible to serve as grand and petit jurors. One such box shall be provided and designated for each of the several counties within this district where stated terms of this Court are required by law to be held.

On the first day of October 1879, and annually on that day thereafter, the Clerk and Commissioner of Jurors shall select the names of at least four hundred persons for each of said

counties, qualified to serve as grand and petit jurors, residents of the county, selected without reference to party affiliations. Each name shall be written on a separate ballot, with the person's place of residence. The first name shall be selected and deposited in the box by the Clerk, and thereupon the Commissioner and Clerk shall alternately select and deposit a name in the box, until the required number shall be completed.

If, at any time, less than three hundred names remain in the box, the Clerk and Commissioner shall replenish the quota in the manner aforesaid.

The boxes shall be locked and retained by the Clerk, and the keys shall be kept by the Commissioner.

The names of all persons who may be required to serve as grand and petit jurors at any term of this Court, shall be drawn publicly by the Clerk from the box for the county in which the term is to be held, and at the close of such term the ballots containing the names of persons who actually served as jurors, or who proved to be ineligible as jurors, shall be destroyed by the Clerk.

The Clerk shall post upon the outer door of the Clerk's office notice of the time and place of drawing jurors, at least ten days prior to the drawing, except when jurors are summoned during a session of the Court.

NORTHERN DISTRICT OF NEW YORK.

DISTRICT COURT

ADMIRALTY RULES.

Rules of Practice of the District Court of the United States for the Northern District of New York, in cases of Admiralty and Maritime Jurisdiction on the instance side of the Court, as amended and established at the May Term, 1856.

Rule 1.

The "Rules of Practice of the Courts of the United States, in causes of Admiralty and Maritime Jurisdiction, on the instance side of the court," prescribed by the Supreme Court of the United States, at the January Term, 1845, and the rules of said court in addition to or in modification of the same, are rules of practice in this court in all cases of admiralty and maritime jurisdiction, including cases within the act entitled "An Act extending the jurisdiction of the District Courts to certain cases upon the lakes and navigable waters connecting the same," passed February 26th, 1845.

Rule 2.

A special session of the court is hereby appointed to be held at Utica, on Tuesday of every week, at ten o'clock in the forenoon; at which special session all process may be made returnable, and all proceedings may be had, except trials by jury, which will not be held without a special order by the judge for that purpose, except at a stated term; and except trials of issue of fact before the court, which will be had only on the first Tuesday of each month, other than the months of July and

August, without a like special order. Issues of fact may be brought to trial by either party after twenty days' notice to the other parties in interest or in pursuance of an order previously obtained for such purpose; and issues of law, and enumerated and non-enumerated motions may be brought to a hearing after eight days' notice as aforesaid, or in pursuance of a like order; but no notice shall be required in respect to any proceeding or motion which can be properly made or taken on the return day of process, if such motion shall be made or proceeding taken on such return day, or when the court shall not sit on such return day, on the first court day thereafter. In case of the non-attendance of the judge at the time hereby appointed, or at any other time which may by special order be appointed, for any special session of the court, all process and proceedings shall be continued as of course, and without prejudice, to the next special sessions, or by special order, to some earlier day for that purpose appointed by the judge.

Rule 3.

All process shall bear test of the day on which it is sealed, and shall be made returnable before the judge at Utica, on any Tuesday thereafter, sufficiently remote to admit of the prescribed notice. But final process upon bonds or stipulations may be made returnable at a stated term of the court, or at a special session as hereinbefore provided.

Rule 4.

The newspaper called the *Buffalo Commercial Advertiser*, printed at the city of Buffalo, is hereby designated, in pursuance of Rule 9 of the Rules of Practice in admiralty and maritime causes prescribed by the Supreme Court, as the newspaper in which all notices shall be printed, which are by the said rule required to be published in a newspaper, in all suits *in rem*, in which the arrest of the vessel, goods, or other thing proceeded against, has been made at or within the collection district of Buffalo Creek, or in the collection district of Niagara.

Rule 5.

The Second National Bank of Utica is hereby designated as the place of deposit for moneys paid into court.

Rule 6.

Libels, answers, and all other pleadings and papers to be filed, shall be so plainly written as to be readily legible, and shall be free, to all reasonable extent, from interlineations and erasures; and it shall be the duty of the clerk to reject all papers delivered to him to be filed, which are not in conformity with this rule.

Rule 7.

All libels praying process of arrest *in personam* shall be verified by the oath or solemn affirmation of the libellant, or of one libellant, unless, for sufficient cause shown, such oath or affirmation shall be dispensed with by the special order of the Judge. All libels praying process of arrest *in rem* shall be verified by the oath or solemn affirmation of the libellant, or of one libellant, or of an officer or agent of the libellant, or of one libellant, or by the oath or affirmation of the proctor, to the best knowledge, information and belief of the person so verifying the same. Such libels need only be signed by the proctor. The clerk is authorized to issue process of arrest and of monition on libels so verified and signed.

All answers and other pleadings, not hereinbefore provided for, shall be signed and verified in the same manner as libels praying process of arrest *in rem*.

Rule 8.

In suits *in rem*, the mesne process shall be served, and the required notices given, at least fourteen days before the return day of the process, unless a shorter time shall be prescribed by special order, founded upon the exigencies of the particular case.

Rule 9.

All process, and all notices for publication in a newspaper in pursuance of Rule 9 of the Rules of Practice in admiralty and maritime causes, prescribed by the Supreme Court, shall be drawn up by the clerk; and no process, except subpoenas, shall be issued by him in blank.

Rule 10.

The notice mentioned in the last preceding rule shall contain the title of the suit, a summary statement of the cause of action, the amount of the demand, and the day and place fixed for the return of the process; and shall have affixed at the close thereof the name of the proctor of the libellant, and that of the marshal, or of his deputy intrusted with the execution of the process.

Rule 11.

The amount of the debt or damages for which the action is brought, shall be stated in the libel, and, with the addition thereto, for costs, of \$250 in a suit *in rem*, and of \$100 in a suit *in personam*, shall be indorsed on the mesne process, thus: "Action for \$;" and in a suit *in rem* the requisite bond or stipulation, upon the release of the property, shall be in the sum of \$250, in addition to twice the amount demanded in the libel; and in a suit *in personam* in the sum of \$100, with the addition of twice the amount of the demand.

Rule 12.

When the libellant is not a resident of the district, he shall, at the time of commencing his suit, give a bond or stipulation, with one or more sufficient sureties, in the sum of at least one hundred dollars, if the suit is *in personam*; and in the sum of at least two hundred and fifty dollars, if the suit be *in rem*—conditioned that he will appear from time to time, and abide by all orders, interlocutory and final, of the court, and pay the costs and expenses, if any, which shall be awarded against him by the final decree of this court, or of any appellate court: *Provided*, however, that this regulation shall not extend to suits for seamen's wages, nor to suits for salvage, when the salvors have come into port in possession of the property libelled.

Rule 13.

In all cases not embraced within the last preceding rule, on motion of the defendant or claimant, the court will, in its discretion, direct the libellant, on pain of dismissing his libel, to give the like security.

Rule 14.

Instead of the security specified in the two last preceding rules, the party from whom it is required may, at his option, deposit in court a sum of money of the like amount.

Rule 15.

If in any case a libel shall be filed in behalf of a libellant who is not a resident within the district, before security for costs and expenses shall be filed as required by Rule 12, the proctor for such libellant shall be liable for costs and expenses to the amount specified in the said rule, until such security shall be filed ; and the payment thereof may be enforced by summary process *in personam* against such proctor.

Rule 16.

When a proctor is retained to defend in any suit, before the return day of the mesne process therein, who resides or has his place of business more than three miles from the clerk's office, and not more than three miles from the residence or place of business of the proctor for the libellant, such proctor for the defendant may, at any time before the return day of the process, serve a notice of his retainer on the proctor for the libellant ; and it shall thereupon be the duty of the proctor for the libellant, without delay, to serve on the proctor for the defendant a copy of the libel on file.

Rule 17.

When the defendant's answer, or any other pleading subsequent to the libel, is put in by being simply filed in the clerk's office, instead of being given in open court, in presence of the proctor or advocate for the adverse party, a copy thereof, with notice of the time of filing the same, shall without delay be served on the proctor of such adverse party

Rule 18.

When a decree is made in the absence of the proctor of either party to the suit, unless such proctor resides at the place where the clerk's office is kept, it shall be the duty of the clerk immediately to transmit to him by mail a copy of the decree ; and

such proctor and party shall be responsible to the clerk for the fees to which he may be entitled for such service, according to the usual rate of charge.

Rule 19.

In all suits, other than those founded upon municipal seizure, not less than six days' notice of the sale of property on final process shall be given. A longer notice may be given at the discretion of the marshal or his deputy by whom the sale is to be made, or by order of the court. It shall be the duty of the marshal in all cases in which it shall be practicable, to make the sale and pay the proceeds into court on or before the return day of the process, under which such sale is to be made. The clerk will in all cases make the process returnable at such time as may be necessary to enable the marshal to give the requisite notice, make the sale, and return such process on or before the return day thereof.

Rule 20.

Whenever any libel shall be taken as confessed, for want of answer, there shall be an order of reference to the clerk or a commissioner *pro hac vice* to take proof of the material facts and circumstances stated in the libel, and to examine the libellant on oath or affirmation, in respect to payments or offsets, and in the discretion of the referee in respect to any other matters pertaining to his demand, and the referee shall report accordingly.

Upon sufficient cause shown, the court will in the order of reference, or otherwise, direct that the oath or affirmation of the libellant may be received in support of the allegations of the libel, or will give such other special directions in respect to the proceedings upon the reference as the nature of the case may require.

Rule 21.

In case of reference under a decree *pro confesso*, the libellant shall, unless otherwise specially directed, proceed with the reference within four days from the date thereof; and upon a reference in cases in which an answer shall have been interposed, or in which, for other reasons, notice of hearing on the reference shall be required, the hearing may proceed on any

day appointed by the referee, at the instance of either party; provided, that eight days' notice shall have been given of such hearing, to all adverse parties who have appeared in the cause.

Such reference may be continued from day to day, or by adjournment, and when adverse parties appear, the proofs shall be closed at the end of thirty days from the date of the order of reference, unless the parties shall agree to the closing of the same at an earlier day, or unless the time shall be extended by the written order of the referee, or by the written stipulation of the parties, or by the order of the court for that purpose obtained; and the clerk or commissioner shall make and file his report within eight days after the testimony shall have been closed.

Rule 22.

Exceptions to any report made by the clerk or a commissioner, must be filed or served on the adverse party within ten days after such report shall have been filed, unless the time shall be enlarged by the judge or by the written stipulation of the parties; and if exceptions are not so filed and served, the party in whose favor the report may be, may, on the first special session thereafter, and without notice, move for the confirmation of the report, and a final decree thereupon.

Rule 23.

When interrogatories are propounded by the defendant at the close of his answer, touching any matters charged in the libel, or touching any matter of defence set up in the answer (according to Rule 32, of the Rules of Practice prescribed by the Supreme Court), the libellant shall answer the same within twelve days, unless, for sufficient cause shown, he shall, by special order, be allowed a longer period; and the court may, in its discretion, require such interrogatories to be answered within a shorter time or *instantly*.

Rule 24.

When interrogatories are propounded to a garnishee (in pursuance of Rule 37, of the Rules of Practice prescribed by the Supreme Court), a copy thereof shall be served upon the garnishee personally, or, in case of his absence from his dwelling-

house or usual place of abode, by leaving such copy with some person of suitable age who is a member or resident of the family; and the garnishee shall be required to answer the interrogatories within twelve days after such service, unless a longer period shall, for adequate cause shown, be by special order allowed for that purpose; and the court may also, in its discretion, prescribe a shorter period.

Rule 25.

Exceptions to the libel (taken in pursuance of Rule 36, of the Rules of Practice prescribed by the Supreme Court), for surplusage, irrelevancy, impertinence, or scandal, may be taken *ore tenus* on the return day of the mesne process; and exceptions to the answer or other allegations given by the defendant, taken for the like causes, in pursuance of the same rule, or in pursuance of Rule 27, for want of sufficiency, fulness, or distinctness, may be taken in like manner, when the answer or other allegation is put in in open court; and the court will thereupon, in its discretion, either decide upon the sufficiency of the exceptions so taken, *instantly*, or direct the same to be drawn up in writing, and appoint a day to hear argument thereon, or refer the same to a commissioner.

Rule 26.

When, at the return of the mesne process, further time has been granted to answer the libel, and the answer, instead of being produced and offered in open court, in the presence and hearing of the advocate of the libellant, is simply filed with the clerk, a copy thereof shall, without delay, be served on the proctor for the libellant, personally, if he resides within three miles of the proctor for the defendant, otherwise either personally or by mail; and the proctor for the libellant may, within ten days after the service thereof, file and serve exceptions thereto. The defendant, within eight days after the service of such exceptions, may give a written notice of his submission to any or all of them; and if any of them are not submitted to within the time prescribed, the libellant may bring the same to a hearing before the court, by giving, at any time within six days, a notice of not less than six, nor more than ten days,

of such hearing. Every exception not submitted to, and which is not notified for hearing within the time specified, shall be considered as abandoned.

Rule 27.

When exceptions are referred to a commissioner, if the party who obtained the reference shall not procure and file the commissioner's report within fourteen days from the date of the order of reference, unless further time shall be allowed, for sufficient cause shown, by special order, the exception shall be considered as abandoned. The party by whom the reference was obtained shall have eight days after filing the report of the commissioner, to except thereto. On filing the report, he shall give notice of filing the same to the adverse proctor, who shall have eight days after such notice to except to the report. Exceptions to a commissioner's report may be noticed for argument by either party, and the notice shall be served at least six days before the day designated for the hearing.

Rule 28.

All appeals to the Circuit Court must be interposed within ten days from the date of the decree, or within such other period as shall be designated by special order made in the particular suit; and in cases where the right of appeal is allowed, no final process shall issue, before the expiration of the ten days, or other period prescribed.

Rule 29.

The regulations prescribed by law relative to the mode of serving notices and other papers, in suits prosecuted in the courts of the State of New York, are hereby adopted, *mutatis mutandis*, as rules of this court.

Rule 30.

The provisions in the foregoing rules contained, shall be held applicable, as far as may be, to all proceedings by petition or otherwise, which may be instituted to enforce any lien or demand, upon or against any property in the custody of the court, or any proceeds in the registry.

Rule 31.

It is ordered, That where several suits are instituted against one and the same vessel, or the proceeds thereof, no more than one charge for mileage shall be allowed for the service and return of mesne process in such suits, unless for special cause shown it shall be otherwise specially ordered by the court.

Rule 32.

It is hereby ordered, That the rule heretofore made and entered, requiring the office of the clerk of this court to be kept at the city of Auburn, be, and the same is hereby abrogated, and it is ordered that the said office be henceforth kept at the city of Buffalo.

ADDITIONAL RULES.

Adopted in 1860, and subsequently, in some respects, modified.

Rule 1.

In order to prevent the commencement of suits upon small demands, and the consequent accumulation of costs altogether disproportionate to the sum demanded, the clerk will issue no process for seamen's wages, when the sum sworn to be due to a sole libellant is less than ten dollars, or to several joint libellants is less than fifteen dollars, or for any other demand, when the amount sworn to be due is less than twenty dollars, except when especially ordered by the court or the judge thereof, or such judge shall be absent from his place of residence. When the amount recovered shall be less than the sums above named, no costs will, in ordinary cases, be decreed to the libellant unless it shall be shown upon the hearing that such libellants could not have had a complete and perfect remedy in a court of a justice of the peace.

Rule 2.

In suits for seamen's wages, the clerk shall insert in the warrant of arrest and monition, after the words "in a cause of subtraction of wages, civil and maritime," the words "and also to answer unto all other persons having demands against the said vessel, for wages earned on board thereof, who may choose

to make themselves parties to the libel of the said (naming the libellant or libellants), by way of amendment or supplement without further process or citation." And all mariners having claims against such vessels may, thereupon, so long as the vessel remains in custody, or any proceeds thereof remain in the registry, make themselves parties to such libel or suit, by a petition and proper allegations, by way of amendment or supplement to such original libel, and may have a decree for the payment of their demands, as though they were named as parties to the original libel, and no new warrant of arrest or monition shall be issued in favor of any seaman, who, in respect to the demand on which he seeks such process, is entitled to make himself a party to proceedings already commenced; and no costs shall be allowed to any such seaman who shall, without sufficient excuse, fail to apply to make himself a party to such a suit on the return day of such process, or the first court day thereafter. And in order to allow such seaman to make such application, no final order of reference in any case for seamen's wages shall be made until the next court day after the return day of the process issued thereon.

Rule 3.

No warrant of arrest shall issue on behalf of a seaman for wages on board a British or Canadian vessel, where it shall appear that such seaman shipped and was discharged in Canada or elsewhere out of the United States; or in favor of any subject of Great Britain against any British vessel until the written consent thereto of the British Consul, or an order of the judge therefor, shall have been filed.

Rule 4.

All decrees for seamen's wages shall direct the amount decreed for such wages to be paid to the libellant in person; and all checks or orders for the payment of such wages shall be drawn, payable to the order of the seaman to whom such wages shall have been decreed.

Rule 5.

No allowance for the expenses of keeping any ship, or vessel, or other property, beyond the sum of fifty cents per day,

or fifteen dollars in the aggregate, shall be allowed to the marshal, except upon the affidavit of the ship-keeper or other custodian, stating his employment and service, and the amount he has been actually paid therefor, and that such payment was received for such service only, and was received wholly for his own benefit, and not for the benefit of any officer of the court; and also, that there is no understanding or intention that the whole, or any part thereof, shall be paid, or in any way disposed of or allowed to the marshal or his deputy, or for his or their benefit; and a copy of such affidavit shall be served with the copy of bill of fees or statement of allowance claimed.

Rule 6.

In collision causes, unless the libel and answer shall respectively state or admit, either positively or upon information and belief, and as fully and accurately as practicable:

1. The names of the vessels which came into collision, and of their respective masters;

2. The time of the collision, and whether in the night or day time;

3. The name of the officer or person in charge of the deck of the vessel of the party;

4. The place of the collision;

5. The general course or direction of the vessel of the party, and her direction at the time of the collision;

6. The state of the weather, and, if in the night, the character of the night in respect to darkness, rain, &c.;

7. The course and speed of the party's vessel, when the other was first seen;

8. The lights, if any, carried by her, and their position;

9. The bearing and apparent distance of the other vessel when the vessel itself was first seen;

10. The lights, if any, of the other vessel which were first seen, and their bearing, and their estimated apparent distance at that time;

11. Whether any lights of the other vessel other than those first seen came into view before the collision, and the particulars thereof;

12. The names of the person or persons, if any, stationed and

acting as lookout on the vessel of the party at the time the other vessel or her light was first seen ;

13. What measures were taken, and when, to avoid the collision, and particularly, whether any and what change of helm or sails was made for that purpose ;

14. The parts of each vessel which first came into contact, and the manner in which they struck ;

15. The character and extent of the injury, if any, to the party's vessel.

The opposite party, on showing to the satisfaction of the court, by affidavit or otherwise, that a more full and specific statement of the circumstances of the collision mentioned in such libel or answer, in respect to some one or more of the particulars above mentioned, is necessary to the proper preparation of an answer to such libel, or the proper preparation, on his part, for the final hearing of such cause, or will materially reduce the expenses of procuring testimony for such hearing, may, on motion (due notice of such motion, with copies of affidavits and papers, other than the files of the court, on which such motion is to be made, having been first served on the opposite proctor at least four days before the day for which such motion is noticed), obtain a special order of the court for the amendment of such libel or answer, in regard to such particulars, within such time, and upon such conditions, and with such consequences, in case of a non-compliance with such order, as the court shall prescribe. And an order staying proceedings on any defective libel, or striking out any defective answer, may be made, on a further notice of motion for that purpose, in case any amendment ordered by the court is not made and filed as required by such order, unless some satisfactory cause for the non-compliance with such order shall be shown.

[See Rule 98, at page 668.]

MARCH 2d, 1869.

It is hereby ordered that in all cases in which the marshal is required to publish any notice of any process or proceeding, or any other notice, in any case pending on the common law or admiralty side of this court (other than in cases provided for by law, or in the Bankruptcy Rules), the marshal or his deputy shall cause the same to be published as follows, viz: In all

cases in admiralty, except seizure cases, the notice of, or under, or under the first process served or executed therein, shall be published in the county where such property was arrested, under such process, and in the newspaper first named in the 38th General Rule in Bankruptcy, heretofore adopted by this court, as one of the newspapers in which notices in bankruptcy cases are, under said rule, to be published in said county ; and in seizure cases, in admiralty, such notice shall be so published in the county where such seizure is alleged, in the information upon which such process was issued, to have been made, and in the newspaper therein first named in said Bankruptcy Rule, as aforesaid ; and all subsequent notices required to be published by the marshal in either of such cases shall be published in the same paper. In all other than admiralty and bankruptcy cases, and in cases otherwise provided for by law, such notices of, or under the first process or proceeding therein, and all subsequent notices in the same cause, shall be published in the county in which the property was arrested, or seized, as above first provided for in admiralty cases, except that such notices shall be published in the newspaper in such county secondly named in said 38th Bankruptcy Rule, instead of the one firstly therein named. And in all cases where the first process is an execution, or other process, or order for the sale of real or personal property, or both, notices of sale, under the same, shall be published in the newspaper secondly named in said Bankruptcy Rules for publication of notices in the county in which such property may be seized under such execution, process, or order.

In case any other newspaper has been, or shall hereafter be, substituted for one of the newspapers named in said Bankruptcy Rule, the publications, in this rule referred to or provided for, shall, in such case, be made in such substituted newspaper, instead of the newspaper now mentioned in such Bankruptcy Rule.

But notwithstanding the provisions hereinbefore contained, the judge of this court may, in any case, by writing under his hand, direct any additional or different publication of any such notice ; and whenever any such direction shall be given, such notice shall be published according to such direction. And in

all cases not provided for by this order, or the General Rules of this court, or by law, all such notices shall be published in such newspaper, and in such manner as said judge shall by writing direct; and in all cases in which such provision has not been made, the marshal, before publishing such notices, shall apply for and obtain such direction.

All notices, unless otherwise provided by law, by the rules of court, or the special order of the court, or the judge thereof, shall be published three times, and the first of such publications shall be made at as early a day as may be required by law, or the rules and practice of the court. And it is further ordered that the clerk certify a copy of the above, and of this order, and deliver the same to the marshal of this district, and that in all seizure cases the clerk shall endorse on the first process issued therein, the name of the paper in which the notices in such case are required to be published under the above order.

XII.

R U L E S.

DISTRICT OF CONNECTICUT.

CIRCUIT COURT.

JUDGES AND OFFICERS
OF THE
CIRCUIT COURT OF THE UNITED STATES
FOR THE
DISTRICT OF CONNECTICUT.

SAMUEL BLATCHFORD—Associate Justice of the Supreme Court of the United States assigned to the Second Judicial Circuit—Circuit Justice.

No. 1432 K Street, N. W., Washington, D. C.

WILLIAM J. WALLACE—Circuit Judge.
Syracuse, N. Y.

DANIEL CHADWICK—United States Attorney.
Lyme, Conn.

United States Attorney's Office, at Lyme, Conn.

EDWIN E. MARVIN—Clerk Circuit Court.
Hartford, Conn.

Clerk's Office at Hartford, Conn.

JOHN C. KINNEY—United States Marshal.
Hartford, Conn.

Marshal's Office at Hartford, Conn.

Court Rooms at Hartford, Conn., over Post Office, and at New Haven, over Post Office.

Circuit Courts held at New Haven on the 4th Tuesday in April, at Hartford on the 3d Tuesday in September.

For FEDERAL STATUTES especially relating to this Court, see
Respecting the PRACTICE in the CIRCUIT COURTS generally, and their power to make RULES, etc., pp. 353 to 355.

Respecting FEES, etc., pp. 357 to 372.

Respecting the JURISDICTION of this Court, p. 376.

Respecting SESSIONS, etc., pp. 377 and 388.

RULES

OF THE

CIRCUIT COURT OF THE UNITED STATES

FOR THE

DISTRICT OF CONNECTICUT.

The Clerk of the Circuit Court of the United States for the District of Connecticut, in response to a request of the Editor for a copy of the Rules of said Court, states in effect as follows:

1. That there are recorded in the records of the Courts some two hundred folios of Rules, which are all practically obsolete save such as are printed hereafter, and such as appear in Blatchford's Circuit Court Reports which are included in the said Rules as printed hereafter.

2. That in Equity the Rules of the Supreme Court of the United States are followed (printed at pp. 297 to 328).

3. That by custom all criminal business is transacted in the District Court, and there are no Rules in reference thereto in this court.

4. That in cases at law in the Circuit Court the State Practice is followed, with one or two trifling exceptions, and the State Practice is largely uncodedified, and follows the Common Law.

5. That the following GENERAL RULES are observed in CASES at LAW in the Circuit Court.

- (1.) The plaintiff must enter an appearance, either by himself or by counsel, on the first day of the term to which the writ is returnable.
- (2.) The defendant must, in like manner, enter an appearance before the second opening of the court, which means before the opening of the court on the second day of the session.
- (3.) If a case is appeared in on both sides it is immediately continued under the rule to plead, which is that the plea shall be filed with the clerk on or before the 1st day of July, when the action is brought to the April term of the court; and on or before the 1st

day of January, when it is brought to the previous September term. If no plea is filed within the time specified, the case must be tried on the general issue only, unless the rule is dispensed with by the court.

- (4.) Amendments to the declaration may be filed during the first term of the court without costs, but not afterwards, except by leave of the court, and on such terms as the court shall prescribe. This rule extends to the other pleadings, except that it is inapplicable so far as the first term is concerned.

6. All cases once entered in this court, remain on the docket, being continued from term to term, until a final decree, judgment or discontinuance is entered, the clerk's fees for continuances, appearances, orders, etc., accruing in the meantime being chargeable to the plaintiff's attorney.

RULES

REFERRED TO IN SUBDIVISION 1 OF THE FOREGOING STATEMENT.

EXAMINATION OF WITNESSES AND PRESENTATION OF PROOFS IN EQUITY CASES.

In Equity.

Adopted at APRIL TERM, 1857.

The parties shall be allowed to examine their witnesses and exhibit their proofs in open court, at the hearing of the cause, in the same manner as on the trial of actions at common law. Provision shall be made by the party or parties so examining the witnesses in court, for taking down the testimony of such witnesses, and placing a transcript thereof on file, in all appealable causes.

Assignment of Causes for Trial.

Adopted at SEPTEMBER TERM, 1872.

Either party to any civil cause pending in the Circuit Court, desiring to have the same tried at any term thereof, shall give written notice of such desire to the Clerk of said Court by filing the same in his office at least twelve days before the open-

ing of said term ; before which opening the Clerk shall make a list of the causes concerning which he has received notice as aforesaid, in the order in which they stand upon the Docket. Such notice shall not be revoked, and such list shall constitute the list of civil causes to be tried at said term. These causes shall stand assigned for trial in their order. If either party to any cause in said list shall not be prepared to try the same when reached in order, he may be defaulted or non-suited as the case may be ; or said cause may be postponed or continued, for cause shown upon affidavit, or stipulation, at the discretion of the Court. Causes not noticed as herein provided, shall be continued as of course. All new causes shall be called at the first term for which they are returned, for purposes of appearance or default.

Writs of error and appeals from the District Court are exempt from this rule, and shall be placed at the head of the list. Causes to which the United States is a party, and which are required by law to be tried at the first term to which they are returnable, shall also be exempt from this rule.

Evidence in Equity Causes.

Adopted at APRIL TERM, 1876.

The parties shall be allowed to examine their witnesses and exhibit their proofs in open Court at the hearing of the cause, in the same manner as on the trial of actions at common law. Provision shall be made by the party or parties so examining the witnesses in Court, for taking down the testimony of such witnesses, and placing a transcript thereof on file in all appealable cases.

This rule shall hereafter apply to those cases only in which the parties, or their solicitor, shall file with the Clerk a stipulation in writing, signed by them, containing a waiver of their right to the mode of proof according to the rules of the Supreme Court of the United States, and an agreement that the mode of proof shall be according to the foregoing rule. *Provided*, that such stipulation shall have no effect upon any causes now at issue, unless filed at least three months before the session of the Court at which the cause is claimed for trial, nor upon any cause not now at issue, unless filed within sixty days after issue

joined. But this provision may be waived by the written consent of both parties.

Enumeration of Folios.

Adopted at APRIL TERM, 1876.

That in all papers filed, and records and trial copies hereafter made in this Court, the successive folios shall be enumerated upon the margin.

Printed Evidence.

Adopted at SEPTEMBER TERM, 1878.

Prior to the trial of the issue upon the merits in any equity cause, each party shall print his own evidence as taken by the Examiner, and shall file with the Clerk of Court five copies of the same.

The costs of such printing, not exceeding twenty-five cents per folio, shall be taxable in favor of the prevailing party.

State Practice in Civil Actions Adopted.

Adopted APRIL 30th, 1880.

In pursuance of the provisions of section 916 of the Act entitled "An Act to revise and consolidate the statutes of the United States in force on the first day of December, Anno Domini one thousand eight hundred and seventy-three," approved June 22d, 1874, it is ordered, that all the provisions of the public Act of the General Assembly of the State of Connecticut, entitled, "An Act relating to civil actions," approved March 29th, 1878, are hereby adopted by this Court, as rules of this Court in respect to a remedy by judgment lien, to reach the real estate of a judgment debtor, in a common law cause in this Court, which lien can be foreclosed or redeemed in the manner provided in said Act.

Presentation of Admiralty Appeals.

Adopted SEPTEMBER TERM, 1881.

On an appeal in Admiralty the appellant shall, prior to the trial in this Court, print the transcript of the record from the District Court, and each party shall print his new pleadings

and proofs in this Court, and five copies of such printed matter shall be filed with the clerk of this Court.

The cost of such printing, not exceeding twenty-five cents per folio, shall be taxable in favor of the prevailing party.

Drawing of Jurors.

Adopted JULY 12th, 1883.

In pursuance of the provisions of the second section of the Act of Congress of the United States, entitled "An Act making appropriations for certain judicial expenses of the Government for the fiscal year ending June 30th, 1880, and for other purposes," approved June 30th, 1879, it is *Ordered*, that suitable boxes will be provided by the marshal and delivered to the clerk for the safe keeping of the names of the persons to be selected as eligible to serve as grand and petit jurors. One said box shall be provided and designated for the counties of Hartford, Tolland, Windham, and New London, which said counties shall be known as Sub-District No. 1, and another box shall be provided and designated for the counties of New Haven, Middlesex, Fairfield, and Litchfield, which said counties shall be known as Sub-District No. 2. The Jury Commissioner and Clerk of this Court shall, as soon as practicable after the entry of this order, and annually thereafter, in the month of August of each year, select to serve as grand and petit jurors in this Court, and place in the boxes so provided as aforesaid, the names of at least four hundred persons for each Sub-District, each of which persons shall possess the qualifications prescribed in section 800 of the Revised Statutes, being the qualifications set forth in "An Act relating to Jurors," passed by the General Assembly of the State of Connecticut, approved March 25th, 1880, and shall be electors of said State, and residents of said respective Sub-Districts. Each name shall be written on a separate slip of paper, with the person's place of residence, and the said clerk and the said commissioner shall each alternately place one name in said respective boxes, commencing with said clerk, without reference to party affiliations, until the required number shall be completed. If at any time less than three hundred names remain in the box, the clerk and the commissioner shall replen-

ish the quota in the manner aforesaid. The boxes shall be locked and retained by the clerk, and the key shall be kept by the commissioner. The names of all jurors, grand and petit, to serve at any term of this court, shall be drawn publicly by the clerk from the box for the Sub-District in which the term is to be held, and from the names placed therein, and at the close of each term the ballots containing the names of persons who actually served as jurors, or who proved to be ineligible as jurors, shall be destroyed by the clerk. The clerk shall post on the outer door of the clerk's office notice of the time and place of drawing jurors at least three days prior to the drawing, except where jurors are summoned during a session of court. All rules inconsistent with this rule are hereby abrogated.

XIII.

R U L E S.

DISTRICT OF CONNECTICUT.

DISTRICT COURT.

JUDGE AND OFFICERS
OF THE
DISTRICT COURT OF THE UNITED STATES
FOR THE
DISTRICT OF CONNECTICUT.

NATHANIEL SHIPMAN—District Judge.
Hartford, Conn.

DANIEL CHADWICK—United States Attorney.
Lyme, Conn.

United States Attorney's Office, Lyme, Conn.

EDWIN E. MARVIN—Clerk District Court.
Hartford, Conn.

Clerk's Office—Room No. 2, over Post-Office, State Street, Hartford, Conn.

JOHN C. KINNEY—United States Marshal.
Hartford, Conn.

Marshal's Office at Hartford, Conn., No. 5, over Post-Office.

Court Rooms at Hartford, over Post-Office, and at New Haven, over Post-Office.

District Courts held at New Haven, on the 4th Tuesday in February; at Hartford, on the 4th Tuesday in May; at New Haven, on the 4th Tuesday in August; at Hartford, on the 1st Tuesday in December.

For FEDERAL STATUTES especially relating to this Court, See
Respecting the PRACTICE in the DISTRICT COURTS generally, their power to make RULES, etc., pp. 353 to 355.

Respecting FEES, etc., pp. 357 to 372.

Respecting the JURISDICTION of this Court, p. 376.

Respecting SESSIONS, etc., p. 379 and p. 388.

RULES
OF THE
DISTRICT COURT OF THE UNITED STATES
FOR THE
DISTRICT OF CONNECTICUT.

The Clerk of the District Court of the United States for the District of Connecticut in response to a request of the Editor for a copy of the Rules of said Court states in effect as follows :

1. That the Criminal Practice in said Court follows the State practice in that respect, which is uncodified and follows the Common Law.

2. That aside from the Criminal Practice, and the practice in cases of Admiralty and Maritime Jurisdiction, there is now no civil practice in the District, and no Rules of Practice except the following :

RULES
IN ADMIRALTY AND MARITIME CAUSES.

I.

MESNE PROCESS.

[See Rules 1, 2, 7, 8, 9, 12, 13, 14, 15, 16, 17, 18, 19 and 20 of the Supreme Court of the United States in cases of Admiralty and Maritime Jurisdiction, at pp. 331, 333, 334, 335 and 336.]

Rule 1.

The first day of every stated Term and the second Monday

of each month in which there is no stated Term of Court, shall be return days, and are appointed special days for admiralty proceedings. All process shall be made returnable to such return days, unless for cause shown it be otherwise ordered, and shall be served on the defendant at least six days before the return day of said process. If there be not six days between the issuing of said process and the next return day, then said process shall be made returnable at the next succeeding return day.

Rule 2.

No *mesne process* (except upon a libel on behalf of the United States or in favor of seamen's wages or praying for salvage, the salvors having possession of the property) shall be issued until the libellant shall have filed with the Clerk a bond or stipulation for costs, in a sum not less than one hundred and fifty dollars. And the Court may on motion, in the cases above excepted, with notice to the libellant after the arrest of the property for adequate cause shown, order the usual bond or stipulation to be given in these cases, or that the property arrested be discharged.

Rule 3.

No warrant of attachment having a clause therein of foreign attachment against the credits or effects of the defendant in the hands of third parties, will be issued, unless the libel set forth the names and places of residence, if known, of the garnishees intended to be served, and it shall contain a citation to such garnishees to appear at the time and place designated for the defendant to appear. In case, after due citation, a garnishee shall neglect or refuse to appear and answer at the time and place named in the citation, the Court may award compulsory process *in personam* against him, the cost of which shall, in any event, be decreed against the garnishee, and if any debts, credits or effects shall be found in his possession, he shall be further decreed to pay them into Court, to abide the final disposition of the cause.

II.

BAIL, STIPULATIONS, RELEASE OF ATTACHMENT CLAIMS, INTERVENORS, &C., &C.

[See Rules 3, 4, 5, 6, 10, 11, 25, 26, 35, 36, 43, 47 and 53 of the Supreme Court of the United States in cases of Admiralty and Maritime Jurisdiction, at pp. 332, 333, 334, 337, 340, 342, 343, and 346.]

Rule 4.

In a suit for seaman's wages any mariner in the same voyage, and in case of salvage and in other causes, civil and maritime, persons entitled to participate in the recovery, and not made parties in the original libel, may, by a short petition to the Court, in any stage of the cause previous to the final distribution of the fund in court, or discharge of the defendant and his sureties, be admitted to participate as a co-libellant, on such terms as the Court may deem reasonable. But no new process shall be issued in favor of the new parties, provided they can have adequate relief upon the process already issued.

Rule 5.

All bonds or stipulations shall be executed by at least one surety, resident in this District, and shall contain the consent of the stipulators, that in case of default or contumacy on the part of the principal or sureties, execution to the amount named in such bond or stipulation, may issue against the goods, chattels and bonds of the stipulators. The officer taking the bond or stipulation, shall examine the sureties under oath and decide as to their competency. An appeal may be taken by either party *instantly* to the Judge in regard to the sufficiency of the sureties.

Rule 6.

When bail is taken by the Marshal, as in Supreme Court Rule III. provided, the bond or stipulation shall be forthwith filed in Court, and upon such filing notice shall be given to the libellant or his attorney, who may, if he sees fit, within five days of such notice, except to such bond or stipulation; whereupon the bondsmen or stipulators shall appear before the Clerk and be examined by the libellant, or his attorney, as to their

sufficiency; from the decision of said Clerk an appeal may be taken *instantly* to the Court; in case no exception be taken to the sufficiency of such bond or stipulation within said five days, the Marshal shall be deemed discharged of all responsibility for the appearance of the defendant.

Rule 7.

In suit *in personam*, stipulators to the Marshal in the arrest of the defendant may be discharged from their bond or stipulation on the surrender of their principal, as in cases of bail at Law, and all stipulators on an arrest or for the appearance of the defendant, may, at any time before final decree, surrender their principal in discharge of the bond or stipulation.

Rule 8.

In case of attachment of property, or arrest of the person, the defendant, garnishee, or any person having a right to intervene therein, may, upon evidence showing any improper practice, or a want of equity, on the part of the libellant, have a mandate from the Judge for the libellant to show cause *instantly* why the arrest or attachment should not be vacated.

III.

APPEARANCE OF PARTIES.

[See Rules 29, 37 and 39 of the Supreme Court of the United States in cases of Admiralty and Maritime Jurisdiction at pp. 338 and 341.]

IV.

NEW PARTIES: INTERVENORS.

[See Rule 34 of the Supreme Court of the United States in cases of Admiralty and Maritime Jurisdiction at p. 340.]

Rule 9.

Whenever, from the death of any of the parties, or change of interest in the suit, defect in the pleadings or proceedings, or that entire justice may be done, new parties to the suit are necessary, the persons so required to be made parties, may be made such either by a petition on their part or on the part of

the adverse party. In which petition it shall be sufficient to allege briefly the prayer of the original libel, the several proceedings in the cause, and a prayer that such persons may be made parties to the suit; upon the filing of which petitions, process shall be issued and served in the regular way, or the Court may, for cause shown, direct by special order the manner in which the same shall be served, and in either event the original action shall not be proceeded with until the new parties shall be regularly in court, and said new parties shall be required to enter into the ordinary stipulation required to be given by persons originally becoming parties to a suit.

V.

PLEADING.

[See Rules 22, 23, 24, 27, 28, 30, 31, 32, 33, 48 and 51 of the Supreme Court of the United States in cases of Admiralty and Maritime Jurisdiction at pp. 336, 337, 338, 339, 340, 343 and 344.]

Rule 10.

Libels—except on behalf of the United States—shall be verified by the oath or affirmation of the party or some person having knowledge of the facts stated in such pleading.

Rule 11.

In all possessory actions the answer shall be filed on the return day unless otherwise ordered by the Judge, and a day for hearing will then be fixed.

Rule 12.

The amount of the debt or damages for which the action is brought shall be stated in the libel, and with the addition thereto of one hundred and fifty dollars in a proceeding *in rem*, and of one hundred dollars in a proceeding *in personam*, shall be endorsed by the clerk on the *mesne* process, thus; "Action for \$," and the amount so endorsed by the clerk shall be considered the amount demanded in said action.

Rule 13.

All interrogatories, direct or cross, shall, in case the parties

disagree in respect thereto, be settled by the Judge ; and six days' notice, unless the Judge shall, for cause shown, order a shorter time, be given by the party objecting to the opposite interrogatories, of the time and place of such settlement.

Rule 14.

The party filing any pleading subsequent to the libel shall, within two days thereafter, notify the proctor of the adverse party, by mail or personally, that the same has been filed, or furnish him a copy thereof.

VI.

EVIDENCE : DEPOSITIONS.

Rule 15.

Depositions *in perpetuam rei memoriam*, to be used in this Court, may be taken under a *dedimus potestatem*, or by any officer authorized by Act of Congress to take depositions *de bene esse*, to be used in the Courts of the United States.

Rule 16.

When either party shall require *viva voce* testimony given in open Court to be taken down by the clerk, pursuant to the Act of Congress, it shall be taken in the same manner as in jury trials, common law issues, and not *verbatim*, as in depositions *de bene esse*.

Rule 17.

The notes of the Judge or of a stenographer, when one is employed by consent of parties, may be used as if taken down by the clerk.

Rule 18.

Either party may diminish, vary, or enlarge the minutes of proof upon consent of the opposite party ; and if amendments are proposed and the parties do not agree thereto, they shall be forthwith referred to the Judge, and he shall settle or determine how the facts are, and the statement thus settled or adjusted shall be filed as the true minutes of the testimony given.

Rule 19.

Depositions taken under commission, or otherwise, shall be forwarded to the clerk immediately after they are taken, and be filed on their return to the clerk's office, in term or vacation; and notice thereof shall be forthwith given by the party filing them to the proctor of the opposite party. And all objections to the form and manner in which they were taken or returned shall be deemed waived, unless such objection shall be specified in writing, within one week after notice that the same are opened, unless further time shall be granted by the Judge.

VII.

SALES: BRINGING FUNDS INTO COURT.

[See Rules 38, 41 and 42 of the Supreme Court of the United States in cases of Admiralty and Maritime Jurisdiction at pp. 341 and 342.]

Rule 20.

Whenever in an action *in personam* any debts, credits, or effects shall be attached in the hands of a garnishee, the Court may, of its own motion, or upon due application, require the party charged with the possession thereof to appear and show cause why the same shall not be brought into court to answer the exigency of the suit; and if no sufficient cause be shown, the Court may order the same to be forthwith brought into court, to answer the exigency of the suit, and, upon failure of the party to comply with the order, may award an attachment, or other compulsive process, to compel obedience thereto.

VII.

PRACTICE.

[See Rule 46 of the Supreme Court of the United States in cases of Admiralty and Maritime Jurisdiction, p. 343.]

Rule 21.

Special sessions of the Court for admiralty proceedings may be opened at any time *instantly*, on the allowance of the Judge, for hearing and disposing of special motions, arguments

on questions of law, and also for taking proofs, or hearing admiralty and maritime causes, and rendering interlocutory or final decrees therein.

Rule 22.

Attorneys, proctors and advocates of any Circuit or District Court of the United States, and attorneys of the Supreme Court of this State, may be admitted proctors and advocates of this Court upon taking the oath prescribed by the Constitution and laws of the United States. But no such admission will be granted unless the same be moved by some proctor or advocate of the Court.

IX.

CLERKS : COMMISSIONERS.

[See Rule 44 of the Supreme Court of the United States in cases of Admiralty and Maritime Jurisdiction, p. 342.]

Rule 23.

The clerk is authorized to tax or certify bills of costs and sign judgments, to take acknowledgments of the satisfaction of judgments, and all affidavits and oaths out of court, as in open court, in all cases where the same are not required by law to be taken in open court.

Rule 24.

Whenever a vessel shall have been sold to pay the claim of any libellant, and the avails of the sale shall be returned into Court, an order shall be entered, as of course, for the clerk to proceed at once to ascertain and state the amount and precedence of the liens and claims upon said avails ; and the said clerk shall forthwith appoint a hearing for said purpose, and shall notify all parties of record, or their attorneys of record, by depositing, post-paid, in the post-office most convenient, a notice of said hearing, addressed to each of them, at least fifteen days prior thereto ; and he shall also give public notice of said hearing by publication two days successively in some newspaper of general circulation, both at or near the place of the vessel's arrest, and at or near its place of enrollment—so near as such place can be ascertained—the last publi-

cation to be at least ten days prior thereto; and at the end of said fifteen days, said clerk shall proceed to ascertain and marshal all claims and liens upon said vessel, and all claimants who shall not at said time have filed their claims and liens with him, shall be barred from participation in said avails; and the clerk shall forthwith return his finding into Court, and shall give notice to all parties of record, or their attorneys of record, of the substance thereof. The Court, upon the next session-day after the expiration of fifteen days, unless objection be made to said report by some party in interest, may proceed to affirm said report, and make its final decree in accordance therewith. Any party aggrieved by said report may state and file his objection thereto in writing, and serve copies thereof on all the parties of record, or their attorneys of record, at least five days before said session day, and shall thereupon be entitled to be heard as to the same; and upon said hearing, the Court shall make such decree as from a full hearing he shall deem meet.

X.

SUPPLEMENTARY RULES OF PRACTICE IN ADMIRALTY.

Under the Act of March 3, 1851, entitled "An Act to limit the liability of ship-owners, and for other purposes." Revised Statutes, Sections 4282-4289.

[See Rules 54, 55, 56 and 57 of the Supreme Court of the United States in cases of Admiralty and Maritime Jurisdiction, at pp. 346, 347 and 348.]

XI.

DECREES: FINAL PROCESS.

[See Rules 21 and 40 of the Supreme Court of the United States in cases of Admiralty and Maritime Jurisdiction, at pp. 336 and 341.]

Rule 25.

No decree shall be entered as of course, by default or mere consent of parties in Court, ordering the condemnation and sale of property arrested on process *in rem*, or for the disposition of the proceeds thereof in court, unless notice shall be

published in the manner directed by the act of Congress—Revised Statutes, Section 923—in the case of condemnation under the revenue laws.

XII.

APPEALS.

[See Rules 45, 49, 50 and 52 of the Supreme Court of the United States in cases of Admiralty and Maritime Jurisdiction, at pp. 343, 344 and 345.]

Rule 26.

Within two days of the rendering of any final decree, the clerk shall notify the proctors of both parties, by mail, of the rendering of such decree, and twelve days thereafter shall be allowed to either party to appeal therefrom, and during which time said decree shall not be executed; and if, within said time, the appellant shall enter into a bond or stipulation, in regular form and before the proper authority, conditioned to pay the damages and costs of such an appeal, the Court shall allow the same. Unless the appellant shall within thirty days cause the proceedings of the Court required by law to be transmitted to the Circuit Court, to be transcribed for that purpose, the appeal shall be considered abandoned, and execution shall be no longer stayed, except by special order of the Court on reasons shown. The several periods of time herein laid down may be extended by special order of the Court.

At a Stated Term of the District Court of the United States for the District of Connecticut, held at the City of Hartford on the eighteenth day of August, in the year of our Lord one thousand eight hundred and seventy-nine.

Present: the Honorable NATHANIEL SHIPMAN, *District Judge.*

In the Matter of the Drawing of }
Grand Jurors to serve in this Court. }

In pursuance of the provisions of the recent Act of Congress of the United States on the above-named subject, Joseph D. Bates of the City of Hartford, having been heretofore appointed a commissioner to perform the duties prescribed by that act in this court, the said commissioner and the clerk of this court shall, as soon as practicable after the entry of this

order, place in a box the names of three hundred and forty-five persons or more to serve as grand jurors in this court, each on a separate slip of paper, each of which persons shall possess the qualification prescribed in Section 800 of the Revised Statutes of the United States, and shall be electors of the State of Connecticut, the said clerk and the said commissioner each placing one name in said box alternately, commencing with said clerk, without reference to party affiliations, until the said number of three hundred and forty-five names or more shall have been placed therein.

All grand jurors to serve in this court shall be publicly drawn by the said clerk from the said box, and from the names so placed therein, and at the time of the drawing of any juror the said box shall contain the names of not less than three hundred persons so placed therein. The said commissioner and the said clerk shall from time to time as may be necessary place in said box in manner aforesaid the names of additional persons, or the same persons, or both, possessing said qualifications, so that the number of said names shall not when any juror is drawn be less than three hundred nor more than five hundred.

N. SHIPMAN,
District Judge.

At a Stated Term of the District Court of the United States for the District of Connecticut, held at Hartford, on the 12th day of July, A.D. 1883.

Present: HON. NATHANIEL SHIPMAN, *District Judge.*

In the Matter of the Selection of }
Petit Jurors for said Court. }

In pursuance of the provisions of the second section of the Act of Congress of the United States, entitled "An Act making appropriation for certain judicial expenses of the Government for the fiscal year ending June 30th, 1880, and for other purposes," approved June 30th, 1879, it is ordered that suitable boxes be provided by the marshal and delivered to the clerk for the safe keeping of the names of persons to be selected as eligible to serve as petit jurors. One said box shall be pro-

vided and designated for the counties of Hartford, Tolland, Windham and New London, which said counties shall be known as Sub-District No. 1, and another box shall be provided and designated for the counties of New Haven, Middlesex, Fairfield and Litchfield, which said counties shall be known as Sub-District No. 2. The Jury Commissioner and the Clerk of this Court shall in the months of July and August in each year, select to serve as petit jurors in this Court, and place in the box so provided as aforesaid the names of at least four hundred persons for each Sub-District, each of which persons shall possess the qualifications prescribed in Section 800 of the Revised Statutes, being qualifications set forth in "An Act relating to Jurors," passed by the General Assembly of the State of Connecticut, approved March 25th, 1880, and shall be electors of said State, and shall be residents of said respective Sub-Districts. Each name shall be written on a separate slip of paper, with the person's place of residence, and the said clerk and the said commissioner shall each place alternately one name in said respective boxes, commencing with said clerk, without reference to party affiliations, until the required number shall be completed. If at any time less than three hundred names remain in the box, the clerk and the commissioner shall replenish the quota in the manner aforesaid. The boxes shall be locked and retained by the clerk, and the key shall be kept by the commissioner. The names of all petit jurors to serve hereafter at any term of this Court, shall be drawn publicly by the clerk from the box for the Sub-District in which the term is to be held, and from the names placed therein, and at the close of each term, the ballots containing the names of persons who actually served as jurors, or who proved to be ineligible as jurors, shall be destroyed by the clerk. The clerk shall post upon the outer door of the clerk's office notice of the time and place of drawing petit jurors at least three days prior to the drawing, except when jurors are summoned during a session of court. All rules inconsistent with this rule are hereby abrogated.

N. SHIPMAN,
District Judge.

HARTFORD, July 12th, 1883.

XIV.

R U L E S .

DISTRICT OF VERMONT.

CIRCUIT COURT.

JUDGES AND OFFICERS
OF THE
CIRCUIT COURT OF THE UNITED STATES
FOR THE
DISTRICT OF VERMONT.

SAMUEL BLATCHFORD—Associate Justice of the Supreme Court of the United States assigned to the Second Judicial Circuit—Circuit Justice.

No. 1432 K Street, N. W., Washington, D. C.

WILLIAM J. WALLACE—Circuit Judge.
Syracuse, N. Y.

KITTREDGE HASKINS—United States Attorney.
Brattleboro, Vt.

United States Attorney's Office at Brattleboro, Vt.

BRADLEY B. SMALLEY—Clerk Circuit Court.
Burlington, Vt.

Clerk's Office at Burlington, Vt.

WILLIAM W. HENRY—United States Marshal.
Burlington, Vt.

Court Rooms at Burlington, Rutland and Windsor, Vt.

Circuit Courts held at Burlington, on the 4th Tuesday in February; at Windsor, on the 3d Tuesday in May; at Rutland, on the 1st Tuesday in October.

For FEDERAL STATUTES especially relating to this Court, see
Respecting the PRACTICE in the CIRCUIT COURTS generally and their power to make RULES, etc., pp. 353 to 355.

Respecting FEES, etc., pp. 357 to 372.

Respecting the JURISDICTION of this Court, p. 376.

Respecting SESSIONS, etc., pp. 377 and 389.

RULES
OF THE
CIRCUIT COURT OF THE UNITED STATES
FOR THE
DISTRICT OF VERMONT.

Rule 1.

Attorneys of the Supreme Court and solicitors of the Court of Chancery of the State of Vermont, may, on motion in open Court, or before a judge at chambers, be admitted of course, as attorneys and solicitors in this Court : and attorneys and solicitors of said Court may, in like manner, be admitted as proctors and advocates on the admiralty side of this Court. All being sworn to support the Constitution of the United States, and to faithfully and uprightly conduct themselves in their office. And it shall be the duty of the Clerk of the Court to make a record thereof, and give the person admitted a certified copy, for which he shall receive a reasonable compensation.

Rule 2.

Grand and petit jurors to serve at the session of this Court, required by law to be held at Windsor, shall be summoned from the County of Windsor ; and those to serve at the session required to be held at Rutland, shall be summoned from the County of Rutland, unless otherwise specially ordered by the Court or a judge thereof ; and those required to serve at any special session of this Court shall be summoned from the County in which said special session shall be held, unless other-

wise specially ordered ; and they shall be drawn and summoned in the manner provided by the laws of the State, for such Jurors in the County Courts ; and if any panel shall not be full when called, the same may be filled by talemén selected under the order of the Court, or a further number of regular jurors may be summoned, as the Court shall direct.

Rule 3.

In cases of opposition of opinion between the judges, whether in civil or criminal cases, either party may, within four days after such opposition of opinion occurs, serve on the other party a statement in writing of the point or points of disagreement, and also of such facts and of so much of the pleadings in the case as are necessary to present the said point or points with clearness and precision, and if no amendments are proposed thereto within two days, such statement shall be filed and engrossed by the clerk and certified under the seal of this Court to the Supreme Court.

When amendments are proposed, such statement and amendments shall be submitted to the Court for settlement like a case or bill of exceptions.

Rule 4.

The clerk of this Court shall reside and keep his office at Burlington until otherwise ordered.

Rule 5.

If an attorney, proctor or solicitor does not reside in this State, service of all notices and papers may be made as to him by affixing the same in a conspicuous place in the clerk's office.

Rule 6.

All notices shall be in writing, and shall be served on the attorney, proctor or solicitor, or party in the cause, either personally or by leaving the same at his last and usual place of abode in the hands of some discreet person ; but when the object is to bring the party into contempt, the service shall be personal unless otherwise ordered by the Court. And no service by notice or paper in the ordinary proceedings in a cause

shall be required to be made on a defendant who has not appeared therein.

Rule 7.

The form of process and declaration shall be the same as is or may be provided by the laws of this State, and in cases not expressly provided for by such laws, in the form used in the County and Supreme Courts of the State so far as they may be applicable to the Federal Courts.

Rule 8.

All process shall be dated the day it issues, and all mesne process shall be returnable to the next regular term, if there shall be time for seasonable service thereof, according to the laws of this State, otherwise it shall be returnable to the next regular term thereafter; final process shall be returnable to the next regular term, or otherwise, if so specially ordered by a judge.

Rule 9.

The plaintiff, in all mesne process, shall give security to the adverse party for the costs of defence if he fail in the action, by filing the bond of some responsible person, other than himself, resident in this State, in the penal sum of two hundred dollars in the office of the clerk on or before the return day of the process, conditioned for the payment of such costs as shall be adjudged against the plaintiff; and the Court or any judge thereof, may, on motion, require additional security for costs as shall be just; and a failure to comply with this rule or any other made under it, shall be ground of non-suit, unless the Court, in its discretion, shall relieve the party in default.

Rule 10.

The Court or any judge may require any defendant who shall be held to bail, to put in additional or better bail, and on failure to comply, such defendant shall be defaulted, unless the Court shall, in its discretion, relieve such defendant from such default. Bail may justify in Court, or before a judge at chambers, or before the clerk with the right of appeal to a judge.

Rule 11.

The creation, continuance and termination of liens and rights created by attachment of property, or the arrest of a defendant, shall be governed by the laws of this State.

Rule 12.

In cases in which personal service of process has not been made by reason of the absence of the party to be served, from the district, notice may be given him to appear, by publication in such paper, and such manner as the Court or a judge thereof may order.

Rule 13.

All suits shall be docketed on the first day of the term to which they are returnable, but for special cause the Court may permit a suit to be docketed at a later day in the term.

Rule 14.

The appearance of the defendant in person, or by an attorney of this Court, shall be entered on the docket on the first day of the term, at which he is required to appear, but for special cause the Court may permit an appearance to be entered at a later day in the term.

Rule 15.

If no appearance shall be entered pursuant to the foregoing rule, the defendant may be defaulted, and final judgment be entered upon such default.

Rule 16.

If cases of judgment for the plaintiff, upon default, *nil dicit*, or on demurrer, or for non-compliance with any order of the Court, the damages may be assessed by the Court, or by the clerk, or any proper person appointed by the Court for that purpose.

Rule 17.

All civil causes, except those mentioned in rules 18 and 19, shall be continued at the first term, on motion of either party; the postponement of criminal cases shall be discretionary with the Court.

Rule 18.

When in suits upon bonds for the payment of duties, and in suits brought against persons responsible for the payment of public money, for the recovery thereof, the defendant interposes a plea, the district attorney may have the cause placed on the calendar, at the same term, without other notice; and may bring the same to trial when called, unless the Court shall continue the cause over, at the instance of the defendant.

Rule 19.

No plea shall be received in any suit instituted in this Court upon a bond executed to the United States for the payment of duties, or, in any suit instituted upon a bail-bond taken in consequence of such suit, unless such plea shall be accompanied by an affidavit of the truth of the matters in the plea contained.

Rule 20.

In the cases mentioned in rules 18 and 19, the defendant, unless the case be continued, shall plead before noon of the second day of the term, and the plaintiff may reply *instantly*, or have the case continued, at his option. If continued, he shall reply within thirty days, and the subsequent pleadings shall be put in within the same intervals.

Rule 21.

In all cases continued, the defendant shall plead or demur within sixty days, and the plaintiff shall reply or demur within thirty days thereafter, and so on until the pleadings are closed. Copies of all pleadings shall be served on the attorney of the adverse party, (or on the party himself if he have no attorney,) by depositing the same in the post-office properly addressed, postage paid. Dilatory pleas shall be filed before noon of the second day of the term, and the plaintiff may reply within a time to be allowed by the Court.

Rule 22.

A judge at chambers may, on motion and notice, make, enlarge, or discharge orders for bail, enlarge the time for pleading, allow amendments of process, declarations, or pleadings,

and make any other interlocutory orders in a cause for the orderly proceedings therein, or the speeding thereof.

Rule 23.

Common orders, (or orders of course, without special cause shown,) and orders by consent, may be entered in the proper book in the clerk's office in term or in vacation; the day of entering the same being noted therein, and the party may enter such order as he may consider himself entitled to, of course, but at his peril.

Rule 24.

Reasonable notice of assessment of damages and taxation of costs shall also be given; but no notice of assessment or taxation shall be required except when the defendant shall have appeared by an attorney. And in cases of judgment for the defendant, reasonable notice of taxation of costs shall be given to the plaintiff's attorney, if any has appeared. And where an assessment is not made by a judge, or jury, any contested point of law or practice may be revised by a judge on application of either party, filed within twenty-four hours after the filing of the report of the assessment. Taxation of costs may also be reviewed by a judge in like manner. But in cases in which it shall be necessary to issue execution immediately, in order to hold property attached, or bail, such application for review shall not delay the making up of the judgment on such assessment and taxation, and the issuing of execution thereon by the clerk, unless so ordered by a judge; but if execution thus issue, the party will take it at his peril.

Rule 25.

Applications made by a party in pursuance of the fifteenth section of the judicial act, to require the opposite party to produce books and writings, must be made upon petition, verified by affidavit, setting forth plainly the facts and circumstances upon which the application is founded; and in such petition, or in the affidavit thereto subjoined, it must be stated that the books or writings, the production whereof is sought, are not in the possession nor under the control of the petitioner, and that he is advised by his counsel, and verily believes that the pro-

duction of the books or writings mentioned in such petition is necessary to enable him safely to proceed in the prosecution or defence (as the case may be) of his suit.

Rule 26.

The petition may be presented to the judge of this court in vacation, as well as to the Court in term; and the order to be made thereon shall be that the party against whom the application is made shall produce the books or writings mentioned in the petition, or show cause on the day and at the place to be therein specified, why the prayer of such petition should not be granted.

Rule 27.

Such order shall also specify the manner in which such books or writings shall be produced, and may require the party either to produce and deposit the same with the clerk of this Court, or to deliver to the petitioner or his attorney copies thereof verified by oath.

Rule 28.

A copy of such petition, together with a copy of the order made thereon, shall be served upon the party against whom the order is directed, a reasonable time to be prescribed in the order before the day therein prescribed for showing cause.

Rule 29.

Commissions to take the examination of witnesses may issue by order of Court in term, or of a judge in vacation.

Rule 30.

Such commissions may also be issued by consent. But the agreement for that purpose shall be in writing, and filed in the clerk's office; and the clerk shall, in such case, make an endorsement upon the commission, under his signature, in the following form: *Allowed by consent of parties.*

Rule 31.

All civil causes shall (if a trial is intended) be noticed for trial.

Where a cause is noticed for trial by a party desiring it, a notice thereof shall be entered on the docket at least twenty days before the term. And notice of countermand shall be given personally, or through the post office, to the counsel of the other party at least six days before the time for which the cause was noticed. And no such cause shall be tried unless so noticed, without the consent of the parties.

Rule 32.

Whenever it shall be intended to move to set aside a non-suit or verdict, except for irregularity, a case shall be prepared by the party intending to make the motion, and a copy thereof shall be served within four days after the trial on the opposite party, who may, within four days thereafter, prepare amendments thereto, and serve a copy on the party who prepared the case, who may then, within four days thereafter, serve the opposite party with notice to appear, within a convenient time, before the judge, to have the case and amendments settled. The judge shall thereupon correct and settle the case, as he shall deem to consist with the truth of the facts. The time for settling the case must be specified in the notice, and shall be not less than four, nor more than twenty days after service of such notice.

Rule 33.

If the party omit to make a case within the time above limited, he shall be deemed to have waived his right thereto; and when a case is made and the parties shall omit, within the several times above limited, the one party to propose amendments and the other to notify an appearance before the judge, they shall respectively be deemed, the former to have agreed to the case as prepared, and the latter to have agreed to the amendments as proposed. If judgment has been rendered upon a verdict, the party intending to move for a new trial shall give four days' notice in writing to the opposite party, of any motion to stay execution thereon, and also of the petition intended to be filed pursuant to the 18th section of the act of September 24th, 1789, unless a shorter time be allowed by the Court or a judge thereof.

Rule 34.

General verdicts may be taken subject to the opinion of the Court on a case to be made by the party in whose favor the verdict is taken, containing all the evidence given at the trial, the case to be prepared and settled in the manner prescribed in the foregoing rules.

Rule 35.

In cases of exceptions taken, demurrer to evidence or special verdict, the party shall not be required to prepare, at the trial, his bill of exceptions, demurrer, statement of evidence or special case, or to put in form the special verdict, but shall merely reduce such exceptions to writing, or make a minute of the demurrer to the evidence, and of the facts found specially by the jury, as the case may happen to be, and deliver it to the judge, or the judge will himself note the points, as he may direct; and the bill, demurrer or special verdict, shall afterwards be drawn up, amended and settled within such times and under the same regulations as are made with respect to cases.

Rule 36.

A bill of exceptions may, before judgment, be used instead of a case on motion for a new trial, and notice of such motion, together with an order to stay proceedings, and a copy of such bill of exceptions shall operate to stay all further proceedings until the decision of the Court: *Provided*, that proceedings shall not be longer stayed than if a case had been made.

Rule 37.

On hearings before the Court the clerk shall furnish each member of the Court with a certified copy of the case upon both sides, and each party shall pay for his portion of it.

Rule 38.

Whenever an order to stay proceedings shall be granted to enable the party to make a special motion, service of such order with copies of the affidavit upon which it is granted, and notice of the motion, shall operate as a stay of proceedings until the further order of the Court. But if the party shall neglect to

bring on the motion to be heard according to his notice, the proceedings shall be liable to pay the costs of attending to resist the motion.

Rule 39.

No private agreement or consent between the parties or their attorneys in respect to the proceedings in a cause shall be binding, unless the same shall be reduced to the form of a rule by consent, and entered accordingly, or unless the evidence thereof shall be in writing, subscribed by the party or his attorney against whom the same shall be alleged.

Rule 40.

In all cases where a motion shall be granted on payment of costs, or on the performance of any condition, or where the order shall require such payment or performance, the party whose duty it shall be to comply therewith, shall have twenty days for that purpose, unless otherwise directed in the order. And where, by the terms of any order, an act is directed to be done *instantly*, it shall be understood to require such act to be performed within twenty-four hours.

Rule 41.

All moneys paid into Court which any collector of customs is entitled by law to receive, shall, after deducting the costs, be paid over to him by the clerk, upon an order to be entered *of course* for that purpose.

Rule 42.

All moneys paid into Court which are required by law to be deposited in bank, shall be forthwith deposited by the clerk in such bank as the Court may designate, to the credit of the Court.

Rule 43.

All checks for money so deposited, to be drawn out of the bank, shall be signed by the clerk, as clerk, and such check shall be written on the same paper which contains the order of the judge for that purpose.

Rule 44.

A book shall be kept by the clerk, in which he shall enter a full and particular account, under the title of each cause depending in the Court, of all money paid into Court in such cause, and of the payment thereof; and such book shall, at all times, be open to the inspection and examination of the Court or any judge thereof.

Rule 45.

The marshal and his deputies are prohibited from becoming bail in any case depending in this Court. And attorneys, solicitors, proctors and advocates, are also prohibited from becoming bail in any case in which they are employed.

Rule 46.

The clerk may tax and certify bills of costs, and sign judgment records.

Rule 47.

On an indictment found by the grand jury, the district attorney may forthwith sue out a *capias* under the seal of the Court, for the arrest of the person indicted.

Rule 48.

Where a fine is imposed by the Court on any person for any cause, and the party is not thereupon committed, and such fine is not discharged previously to the close of the term, the clerk shall issue to the marshal a warrant of execution, commanding him to levy and make such fine of the goods and chattels, or in the default thereof, of the lands and tenements of the party, and in default thereof, to commit such person to jail in the county where he resides, or may be found, unless some other County is designated by order of the Court.

Rule 49.

In all cases not provided for by the rules of this Court, or by law, the practice of the Supreme and County Courts of this State shall regulate, so far as it may be consistent with the practice of this Court.

Rule 50.

The transcript to be sent to this Court, on appeal thereto from a sentence or decree of the District Court, may be certified by the clerk of the latter Court, under his hand and the seal of the Court.

Rule 51.

Eight days' notice of hearing on appeal, shall, in all cases, be given by the service thereof on the adverse party, or on his proctor.

Rule 52.

When an appeal from a decree of the District Court is interposed twenty days before the next stated session of this Court, it may be noticed for hearing at such session by either party.

Rule 53.

When an appeal from a decree of the District Court is interposed less than twenty days before the next stated session of this Court, the appellee may, at his option, notice the cause for hearing, at such session, on the first or other day thereof; or have the cause continued until the next stated session.

Rule 54.

Transcripts of the depositions taken in any cause in the District Court, according to law—whether *de bene esse* under the acts of Congress, or on commission—and read at the hearing of the cause in that Court, may be transmitted to this Court on appeal and read by either party as evidence at the hearing of the cause in this Court.

Rule 55.

A copy of the notes taken by the judge, or under his direction, by the clerk of the District Court, of the evidence of witnesses examined orally therein, shall be certified and transmitted to this Court on appeal, along with the transcript of the record and other proceedings in the cause, and shall be admitted to prove the evidence given by such witnesses; but nothing herein contained shall be construed to abridge the right of the parties to re-examine such witnesses in this Court if they shall see fit to do so.

OCTOBER TERM, 1871.

It is Ordered—That the clerk enter no suit at law, or in equity, on the docket, or issue any process thereon, until an attorney residing in this district shall enter his name for the plaintiff, or orator.

And no pleadings shall be entered for the defendant, until an attorney residing in this district shall appear for such defendant.

LEWIS B. WOODRUFF, } *Judges.*
D. A. SMALLEY, }

XV.

RULES.

DISTRICT OF VERMONT.

DISTRICT COURT.

JUDGE AND OFFICERS
OF THE
DISTRICT COURT OF THE UNITED STATES
FOR THE
DISTRICT OF VERMONT.

HOYT H. WHEELER—District Judge.
Jamaica, Vt.

KITTREDGE HASKINS—United States Attorney.
Brattleboro, Vt.

United States Attorney's Office at Brattleboro, Vt.

BRADLEY B. SMALLEY—Clerk District Court.
Burlington, Vt.

Clerk's Office at Burlington, Vt.

WILLIAM W. HENRY—United States Marshal.
Burlington, Vt.

Marshal's Office at Burlington, Vt.

Court Rooms at Burlington, Rutland, and Windsor.

District Courts held at Burlington, on the 4th Tuesday in February ; at Windsor, on the 3d Monday in May ; at Rutland, on the 1st Tuesday in October.

For FEDERAL STATUTES especially relating to this Court, see
Respecting the PRACTICE in the District Courts generally, their power to make RULES, etc., pp. 353 to 355.
Respecting FEES, etc., pp. 357 to 372.
Respecting the JURISDICTION of this Court, p. 376.
Respecting SESSIONS, etc., pp. 379 and 389.

RULES
OF THE
DISTRICT COURT OF THE UNITED STATES
FOR THE
DISTRICT OF VERMONT.

Rule 1.

The "Rules of Practice of the Courts of the United States, in causes of Admiralty and Maritime jurisdiction, on the instance side of the court," prescribed by the Supreme Court of the United States, at the January Term, 1845, are understood to be obligatory on this Court, in all causes arising under the act of Congress, entitled "An Act extending the jurisdiction of the District Courts to certain cases upon the lakes and navigable waters connecting the same," passed February 26th, 1845; and the said Rules are hereby declared to be the Rules of Practice in this Court, in exercising the jurisdiction conferred by the said act; and also by any subsequent law of Congress on that subject.

Rule 2.

A special session of the Court will be held at Burlington on the first Tuesday of every month, at ten o'clock in the forenoon; at which special sessions all process must be made returnable, and all proceedings must be had, except trials by jury, which will not be held without a special order of the judge for that purpose, except at a stated term. And in case of the non-attendance of the judge at the time hereby appointed, or at any other time which may, by special order, be appointed, for any special session of the Court, all process and

proceedings shall be continued, without prejudice, to the next special session, or to some earlier day for that purpose appointed by the judge.

Rule 3.

All process shall bear test of the day on which it is sealed, and shall be made returnable before the judge at Burlington, on the first Tuesday of the month next after the test thereof, or of some succeeding month.

Rule 4.

Libels, answers, and all other pleadings and papers to be filed, shall be so plainly written as to be readily legible, and shall be free, to all reasonable extent, from interlineations and erasures; and it shall be the duty of the clerk to reject all papers delivered to him to be filed, which are not in conformity with this rule.

Rule 5.

All libels praying process of arrest, whether *in rem* or *in personam*, shall be verified by the oath or solemn affirmation of the libellant, unless, for sufficient cause shown, such oath or affirmation shall be dispensed with by the special order of the judge. And all libels, answers and other pleadings shall be signed by the party in his own proper hand-writing, and in like manner by the proctor for the party in whose behalf they are filed, unless, for special cause shown, such signature shall be dispensed with by leave of the Court.

Rule 6.

In suits *in rem*, the mesne process shall be served, and the required notices given, at least fourteen days before the return day of the process, unless a shorter time shall be prescribed by special order, founded upon the exigencies of the particular case.

Rule 7.

All process, and all notices for publication in a newspaper in pursuance of Rule 9 of the Rules of Practice in admiralty and maritime causes, prescribed by the Supreme Court, shall

be drawn up by the clerk; and no process, except subpoenas, shall be issued by him in blank.

Rule 8.

The notice mentioned in the last preceding rule shall contain the title of the suit, a summary statement of the cause of action, the amount claimed by the libellant, and the day and place fixed for the return of the process; and shall have the name of the proctor of the libellant, and that of the marshal, or of his deputy by whom the arrest shall have been made, affixed thereto.

Rule 9.

The amount of the debt or damages for which the action is brought, shall be stated in the libel, and, with the addition thereto, for costs, of \$250 in a suit *in rem*, and of \$100 in a suit *in personam*, shall be endorsed on the mesne process, thus: "Action for \$."

Rule 10.

When the libellant is not a resident of the district, he shall, at the time of commencing his suit, give a bond or stipulation, with one or more sufficient sureties, in the sum of at least one hundred dollars, if the suit is *in personam*; and in the sum of at least two hundred dollars, if the suit be *in rem*—conditioned that he will appear, from time to time, and abide by all orders, interlocutory and final, of the Court, and pay the costs and expenses, if any, which shall be awarded against him by the final decree of this Court, or of any appellate Court: *Provided*, however, that this regulation shall not extend to suits for seamen's wages, nor to suits for salvage when the salvors have come into port in possession of the property libelled.

Rule 11.

In all cases not embraced within the last preceding rule, on motion of the defendant or claimant, the Court will, in its discretion, direct the libellant, on pain of dismissing his libel, to give the like security.

Rule 12.

Instead of the security specified in the two last preceding

rules, the party from whom it is required may, at his option, deposit in Court a sum of money of the like amount.

Rule 13.

If, in any case, a libel shall be filed in behalf of a libellant who is not a resident within the district, before security for costs and expenses shall be filed as required by Rule 10, the proctor for such libellant shall be liable for such costs and expenses to the amount specified in the said rule, until such security shall be filed, and the payment thereof may be enforced by summary process *in personam* against such proctor.

Rule 14.

When a proctor is retained to defend, in any suit, before the return day of the mesne process therein, who resides, or has his place of business more than three miles from the clerk's office, and not more than three miles from the residence or place of business of the proctor for the libellant, such proctor for the defendant may, at any time before the return day of the process, serve a notice of his retainer on the proctor for the libellant; and it shall thereupon be the duty of the proctor for the libellant, without delay, to serve on the proctor for the defendant a copy of the libel on file.

Rule 15.

When the defendant's answer, or any other pleading subsequent to the libel, is put in by being simply filed in the clerk's office, instead of being given in open Court, in presence of the proctor or advocate for the adverse party, a copy thereof, with notice of the time of filing the same, shall, without delay, be served on the proctor of such adverse party.

Rule 16.

When a decree is made in the presence of the proctor of either party to the suit, unless such proctor resides at the place where the clerk's office is kept, it shall be the duty of the clerk immediately to transmit to him by mail a copy of the decree; and such proctor and party shall be responsible to the clerk

for the fees to which he may be entitled for such service, according to the usual rate of charge.

Rule 17.

Not less than fourteen days' notice shall be given of the sale of property on final process, unless by a special order of the judge ; and when, in the opinion of the marshal or his deputy, by whom the sale is to be made, the circumstances of the case require a longer notice, he may, in his discretion, extend it to any time not exceeding thirty days.

Rule 18.

When interrogatories are propounded by the defendant at the close of his answer, touching any matters charged in the libel, or touching any matter of defence set up in the answer, (according to Rule 32 of the Rules of Practice prescribed by the Supreme Court,) the libeller shall answer the same within twelve days, unless, for sufficient cause shown, he shall, by special order, be allowed a longer period ; and the Court may, in its discretion, require such interrogatories to be answered within a shorter time, or *instantanter*.

Rule 19.

When interrogatories are propounded to a garnishee, (in pursuance of Rule 37 of the Rules of Practice, prescribed by the Supreme Court,) in Admiralty, a copy thereof shall be served upon the garnishee personally, or, in case of his absence from his dwelling house or usual place of abode, by leaving such copy with some person of suitable age who is a member or resident of the family ; and the garnishee shall be required to answer the interrogatories within twelve days after such service, unless a longer period shall, for adequate cause shown, be, by special order, allowed for that purpose ; and the Court may also in its discretion, prescribe a shorter period.

Rule 20.

Exceptions to the libel (taken in pursuance of Rule 36 of the Rules of Practice prescribed by the Supreme Court,) for surplusage, irrelevancy, impertinence or scandal, may be taken

ore tenus, on the return day of the mesne process; and exceptions to the answer or other allegation given by the defendant, taken for the like causes, in pursuance of the same rule, or in pursuance of Rule 27, for want of sufficiency, fulness or distinctness, may be taken in like manner, when the answer or allegation is put in in open Court; and the Court will, thereupon, in its discretion, either decide upon the sufficiency of the exceptions so taken, *instanter*, or direct the same to be drawn up in writing, and appoint a day to hear argument thereon, or refer the same to a commissioner.

Rule 21.

When, at the return of the mesne process, further time has been granted to answer the libel, and the answer, instead of being produced and offered in open Court, in the presence and hearing of the advocate of the libellant, is simply filed with the clerk, a copy thereof shall, without delay, be served on the proctor for the libellant, personally, if he resides within three miles of the proctor for the defendant, otherwise either personally or by mail; and the proctor for the libellant may, within ten days after the service thereof, file and serve exceptions thereto. The defendant, within eight days after the service of such exceptions, may give a written notice of his submission to any or all of them; and if any of them are not submitted to within the time prescribed, the libellant may bring the same to a hearing before the Court, by giving, at any time within six days, a notice of not less than six nor more than ten days, of such hearing. Every exception not submitted to, and which is not notified for hearing within the time specified, shall be considered as abandoned.

Rule 22.

When exceptions are referred to a commissioner, if the party who obtained the reference shall not procure and file the commissioner's report within fourteen days from the date of the order of reference, unless further time shall be allowed, for sufficient cause shown, by special order, the exceptions shall be considered as abandoned. The party by whom the reference was obtained shall have eight days after filing the report of the commissioner, to except thereto. On filing the report, he

shall give notice of filing the same to the adverse proctor, who shall have eight days after such notice to except to the report. Exceptions to a commissioner's report may be noticed for argument by either party, and the notice shall be served at least six days before the day designated for the hearing.

Rule 23.

All appeals to the Circuit Court must be interposed within ten days from the date of the decree, or within such other period as shall be designated by special order made in the particular suit; and in cases where the right of appeal is allowed, no final process shall issue, before the expiration of the ten days, or other period prescribed.

Rule 24.

In all cases not otherwise provided for, the regulations prescribed by law relative to the mode of serving notices and other papers, in suits prosecuted in the Courts of the State of Vermont, are hereby adopted, *mutatis mutandis*, as rules of this Court, in cases at law as well as in admiralty.

DELIVERY OF PROPERTY UNDER SEIZURE, PENDENTE LITE.

Rule 25.

1. Applications for the delivery to the claimant of property seized as forfeited under any law of the United States, may be made at any time after the service of the monition and warrant of arrest.

2. At least four days' notice of the application shall be given to the district attorney and to the collector of the collection district in which the seizure was made, accompanied by the service on each of them of a copy of the petition for delivery; unless the application be made in open Court, when the district attorney and the collector are present; in which case no previous notice shall be necessary.

3. Unless a claim, duly verified, shall have already been interposed by the applicant, he shall show, at the time of his application, by his own oath or other evidence, that he is lawfully entitled to appear as claimant in the case.

4. The appraisers shall be sworn, faithfully and fairly to

appraise the property in question, and make a true report of the value thereof, according to the best of their understanding, without unnecessary delay.

5. Reasonable notice of the time and place appointed by the appraisers to make the appraisal shall be given to the district attorney, the collector and the claimant.

6. For the purpose of ascertaining the value of the property to be appraised, the appraisers may examine such persons on oath, and receive such affidavits taken before one of the commissioners of this Court, (who are hereby authorized to take such affidavits,) as they may think proper.

7. On the return of the appraisal to the Court, or to the judge in vacation, accompanied by a certificate from the collector and naval officer (if there be one), that the duties on the property seized, if any be chargeable thereon, have been paid; and on satisfactory evidence that the expenses of the appraisal have been paid by the claimant; and on the execution by the claimant of a bond, in conformity with the statutes of the United States in such case made and provided, before the Court, the judge, or the clerk; an order will be granted for the delivery of the property to the claimant.

8. The appraisers shall severally be entitled to be paid for their services in making an appraisal, three dollars a day for each day necessarily spent in the performance of such services.

9. But whenever, in any case, the value of the property seized shall be agreed upon between the collector and district attorney in behalf of the United States, and the claimant, and a certificate in writing expressive of such agreement shall be signed by them and filed in the clerk's office, (in conformity with the practice of the Court heretofore,) it shall have the same validity and effect as if it had been made and reported by appraisers duly appointed for that purpose.

SALE OF PERISHABLE PROPERTY.

Rule 26.

1. Application for the sale of perishable property seized as forfeited under any law of the United States, may be made either by the district attorney in behalf of the United States,

or by the claimant, at any time after the service of the monition and warrant of arrest.

2. At least four days' notice of the application, when made by the claimant, shall be given to the district attorney, and to the collector within whose collection district the seizure was made, accompanied by the service of a copy of the petition for the decree or order of sale; and a like notice shall be given to the claimant, if there be one, or to his proctor or attorney, when the application is made by the district attorney. But when the application is made in open Court, and the proctor or attorney of the opposite party is present, no previous notice shall be necessary.

3. When the application is made by the claimant before a claim duly verified shall have been already interposed, he shall be required to show, at the time of his application, by his own oath or other evidence, that he is lawfully entitled to appear as claimant in the case.

4. The place of sale, and the length of the notice of sale to be given by the marshal, (which, unless otherwise specially directed, shall be given in the manner prescribed by the 90th section of the collection act of March 2, 1799, in cases of condemnation,) will be determined by the Court or the judge, in each case, according to its nature and circumstances, and prescribed in the order of sale.

5. When the application for an order of sale is resisted by the opposite party, and the propriety of such order appears doubtful, surveyors will be appointed, preliminarily, to examine and report as to the condition of the property.

REMISSION OF FINES, PENALTIES, FORFEITURES, AND DISABILITIES.

Rule 27.

Preparatory to the presentation of a petition for the remission or mitigation of any fine, penalty, forfeiture, or disability, a copy of such petition, together with a notice of the time and place of presenting the same, shall be served on the attorney of the United States, and another copy with the like notice on the person or persons claiming the fine, penalty or forfeiture, ten days before the time of presenting the petition.

Rule 28.

The petition, in addition to the other circumstances of the case, shall state whether any, and what suit, has been instituted, and what proceedings have been had for the recovery of the fine, penalty or forfeiture, up to the time of preferring the petition.

Rule 29.

The clerk, under the direction of the judge, shall prepare a statement of the facts relative to the case which appear upon the inquiry, and forthwith transmit the same, together with the petition, to the Secretary of the Treasury.

Rule 30.

The fees of the clerk shall be paid by the petitioner before the transmission of the petition and statement to the Secretary of the Treasury; and where there are several petitioners or distinct claimants, not being partners, or several cases or importations embraced in one petition, the clerk shall be entitled to the same fees as if a distinct petition had been presented in each case.

Rule 31.

The clerk is authorized to enter satisfaction of record of any judgment rendered in this Court in behalf of the United States, on filing an acknowledgment of satisfaction of the same duly made by the district attorney.

Rule 32.

The practice in this Court in instance causes, and in common law, equity and criminal cases, and in all other matters not herein otherwise provided for, shall be regulated by the rules of the Circuit Court for this District.

XVI.

THE GENERAL RULES OF PRACTICE

OF

THE SUPREME COURT

OF THE

DISTRICT OF COLUMBIA.

ALSO THE

RULES IN APPEALS FROM THE

DECISIONS OF THE COMMISSIONER OF PATENTS,

THE RULES OF PRACTICE IN EQUITY

OF SAID SUPREME COURT,

AND

ORPHANS' COURT RULES.

RULES ADOPTED IN ADMIRALTY

(Other than Prize), in addition to those prescribed by the Supreme Court of the United States, and the

RULE REGULATING THE PRACTICE

IN CASE OF

FORCIBLE ENTRY OR DETAINER.

JUDGES AND OFFICERS
OF
THE SUPREME COURT
OF THE
DISTRICT OF COLUMBIA.

DAVID K. CARTTER—Chief Justice.
No. 1505 H Street, N. W., Washington, D. C.

ANDREW WYLIE—Associate Justice.
No. 1205 Fourteenth Street, N. W., Washington, D. C.

ARTHUR MACARTHUR—Associate Justice.
No. 1201 N Street, N. W., Washington, D. C.

ALEXANDER B. HAGNER—Associate Justice.
No. 1818 H Street, N. W., Washington, D. C.

WALTER S. COX—Associate Justice.
No. 1636 I Street, N. W., Washington, D. C.

CHARLES P. JAMES—Associate Justice.
No. 1824 Massachusetts Avenue, Washington, D. C.

AUGUSTUS S. WORTHINGTON—United States Attorney.
No. 411 Maple Avenue, Le Droit Park, Washington, D. C.

RETURN J. MEIGS—Clerk.
No. 302 New Jersey Avenue, S. E., Washington, D. C.

CLAYTON McMICHAEL—United States Marshal.
No. 1015 Connecticut Avenue, N. W., Washington, D. C.

SUPREME COURT DISTRICT OF COLUMBIA. 739

The Terms of the Supreme Court of the District of Columbia are held at the City Hall in Washington City as follows :

GENERAL TERMS.—Third Monday of January, third Monday of April and first Monday of October.

CIRCUIT COURT.—Fourth Monday of January, second Monday of May and third Monday of October.

UNITED STATES DISTRICT COURT.—First Mondays of June and December.

CRIMINAL COURT.—First Monday of March, third Monday of June and first Monday of December.

SPECIAL TERMS.—First Tuesday of every Month except August, in which month there is no Court.

GENERAL RULES OF PRACTICE
OF
THE SUPREME COURT
OF THE
DISTRICT OF COLUMBIA.

ADMISSION TO THE BAR.

Rule 1.

All applications for admission to the bar shall be made to the court in general term. Applicants for admission, who have been admitted to practice law in the Supreme Court of any State or Territory, may, upon satisfactory evidence of good moral character, and after examination as to fitness, or, in the discretion of the court, without such examination, be admitted to the bar. Provided the members of the bar of this court are admitted to the bar of the highest court of such State or Territory upon the same terms. No student shall be admitted until after such examination, and proof of good moral character, and that he has studied at least three years under the direction of some competent attorney. Diligent study in any law school shall, to the extent thereof, be computed as part of said three years. Applicants for admission to the bar must take the subjoined

OATH OF ATTORNEYS.

I ———, do solemnly (affirm) (swear) that I will demean myself as an attorney and counsellor of this court, uprightly and according to law ; and that I will support the Constitution of the United States.

TERMS OF THE COURT.

Rule 2.

The GENERAL TERMS are held—

3d MONDAY OF JANUARY.

3d MONDAY OF APRIL.

1st MONDAY OF OCTOBER.

The CIRCUIT COURT is held—

4th MONDAY OF JANUARY.

2d MONDAY OF MAY, which term shall not continue beyond the 3d Saturday in July, except to finish a pending trial.

3d MONDAY OF OCTOBER.

The DISTRICT COURT is held—

1st MONDAY OF JUNE.

1st MONDAY OF DECEMBER.

The CRIMINAL COURT is held—

1st MONDAY OF MARCH.

3d MONDAY OF JUNE.

1st MONDAY OF DECEMBER.

The SPECIAL TERMS are held 1st TUESDAY of every month, save AUGUST, in which month there is no court.

RETURN, APPEARANCE, OR RULE DAY.

Rule 3.

The first Tuesday of every month, save of AUGUST, shall be the return day of process, appearance day of parties, and the day on which rules or orders may be made in the Clerk's Office to speed any cause depending in the court. And the term *return day, appearance day, or rule day*, always designates the first Tuesday of the month to which it relates.

INTERLOCUTORY ORDERS.

Rule 4.

At Chambers.—When an order is obtained from a judge at chambers, it is not presumed to be known to the opposite party without previous actual notice of the application.

RULE BOOK.

Rule 5.

A record book shall be kept in the Clerk's Office to be called the Rule Book, in which the clerk shall cause to be entered every interlocutory motion, rule, order, or step made or taken in a cause preparatory to its trial on the merits, except such as shall be made in special or general term, which are to be entered in the minutes of the court.

MINUTES.

Rule 6.

The minutes of the court are, in effect, a journal of its proceedings while sitting, entered or recorded in due legal form by the clerk, and signed by the justice or justices presiding.

AMENDMENTS.

Rule 7.

In any stage of a cause, all such amendments may be made as may be necessary for the purpose of determining, in the existing suit, the real question in controversy between the parties, whether the defect or error be that of the party applying to amend or not.

[See Rule 56, also Maryland Act of November, 1785, ch. 50, § 4.]

COMMENCEMENT OF SUIT.

Rule 8.

Every civil action shall be commenced by filing in the Clerk's Office a libel of information, bill, petition, or declaration, as the case may be, and in case of appeal from a justice of the peace, justice's papers and a transcript of his docket shall be filed on making the deposit required by law, or without such deposit, upon an order of the court, or of one of the justices; whereupon the clerk shall immediately enter the case upon the proper docket, in the order of such filing, and number it accordingly.

CAUSES OF ACTION—WHAT INCLUDED.

Rule 9.

The plaintiff may include in his declaration all the causes of action, of the same nature, he has against the defendant, but must state each distinct cause of action in a separate count.

Rule 10.

The declaration in an action by husband and wife may include all the causes of action they jointly have against the defendant, of the same nature, but must state each distinct cause of action in a separate count; in which case, should either plaintiff die pending the suit, it will abate as to such cause of action only as does not survive.

Rule 11.

Where money is payable by two or more persons, jointly or jointly and severally, as by joint obligors, covenantors, makers, drawers, or endorsers, all or any of the parties by whom the money is payable, may be included in the same declaration, at the option of the plaintiff. (14 Stats., 405, § 20.)

EJECTMENT.

Rule 12.

In ejectment, the declaration shall be in the name of the real party in interest against the party claiming to own or be possessed of the land at the commencement of the suit, and the declaration shall specifically set forth the nature and extent of the estate claimed by the plaintiff in the premises. Under separate counts, the plaintiff may unite in his declaration an action of ejectment and an action for mesne profits. And in no action for mesne profits shall proof of possession be required of the plaintiff.

Rule 13.

When the suit is against a tenant by a plaintiff claiming adversely to the tenant's landlord, he may be admitted to defend with or instead of the tenant; and any other person not named in the declaration may be allowed to defend on filing an affidavit, showing that he is in possession of the land, either by himself or his tenant.

FORCIBLE ENTRY OR DETAINER.

Rule without number.

Adopted June 12, 1876. (2 Minutes, General Term, 559.)

In any and every proceeding instituted before a justice of the peace under and by virtue of section 684, chapter 19, of the Revised Statutes of the United States relating to the District of Columbia, if, upon the trial, the defendant, in order to avail himself of the provisions of section 687 of the said Revised Statutes, wishes to plead title to the premises in himself, or in another person under whom he claims the premises, the justice of the peace shall require the plea to be in writing, and to be sworn to by the defendant. The plea shall be in the following or equivalent form :

Before — —, a justice of the peace in and for the District of Columbia, the — day of —, 18—.

A. B., *Plaintiff*,
v.
C. D., *Defendant*. } No. —.

Now comes the defendant in his proper person, and, denying that he held the premises as in the written complaint of plaintiff alleged, says that the title to the said premises is in himself, [or in ——— ———, under whom defendant claims the said premises;] and that the said title hereby claimed is not derived from any letting of the premises by the plaintiff, [or, by those under whom the plaintiff claims;] and is not derived from any forcible entry or forcible detainer.

C. D., *Defendant.*

Sworn and subscribed before me, the ____ day of ____, 18—
_____, J. P.

Any plea of title not made as above required, the justice shall treat as a nullity.

Unless the plea of title be made as by this rule required, the proceedings before the justice shall not be suspended; but the justice shall go on with the trial, and render judgment in the matter as the right of the case may require.

Upon a plea of title being made by the defendant in conformity with this rule, and upon the proceedings being certified

to this court by the justice, the cause shall be docketed by the clerk, and placed on the trial calendar in the same manner, and subject to the same rules, as appeals from a justice of the peace.

The plaintiff shall, during the term of the Circuit Court occurring next after the pleading of title before the justice, file in said court a declaration making a demand for the possession of the premises, and with a description thereof, as in ejectment, and serve the defendant with a copy thereof.

In any such declaration, a general demand shall be sufficient to warrant an assessment of damages and intervening rent, as provided in section 690 of said Revised Statutes.

NOTICE TO PLEAD.

Rule 14.

A notice to plead shall be subscribed to every declaration in the following form :

The defendant is to plead hereto on or before the first special term of the court occurring twenty days after service hereof ; otherwise judgment. P. Q., *Attorney for Plaintiff.*

Except this notice to plead, subscribed to the declaration, no rule to plead or demand of plea shall be necessary.

PROCESS.

Rule 15.

The writ for compelling the defendant's appearance shall be a summons in the following form :

Summons.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, THE ———
DAY OF ——— 18—.

A. B., *Plaintiff*, }
v. } At law, No.—.
C. D., *Defendant*. }

The President of the United States to the defendant, greeting :

You are hereby commanded to appear in this court on the first day of its first special term, occurring twenty days after service of this writ on you, to answer the plaintiff's suit, and

show why he should not have judgment against you for the cause of action stated in his declaration.

Witness,

—— —, *Chief Justice.*

—— —, *Clerk.*

Said writ shall be returnable into the Clerk's Office on or before the next rule-day, occurring twenty days from the time of the issuing thereof.

ATTACHMENT.

Rule 16.

Besides this summons, a writ of attachment and garnishment may be issued—

Whenever the plaintiff, his agent or attorney, shall file in the Clerk's Office, whether at the commencement or during the pendency of the suit, an affidavit, (supported by the testimony of one or more witnesses,) showing the grounds upon which he bases his action, and setting forth that the plaintiff has a just right to recover against the defendant what he claims in the declaration: and also stating either—

1. That the defendant is a non-resident of the District; or,
2. That the defendant evades the service of ordinary process by concealing himself, or by withdrawing from the District temporarily; or,
3. That he *has* removed, or is *about* to remove, some of his property from the District, so as to defeat just demands against him;

And shall also file his (the plaintiff's) undertaking, with sufficient surety or sureties, to be approved by the clerk, to make good all costs and damages which the defendant may sustain by reason of the wrongful suing out of the attachment.

(14 Stats. 54.)

The form of the plaintiff's undertaking may be as follows:

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, THE
 — DAY OF —, 18—.

A. B., <i>Plaintiff</i> ,	} At Law, No.—.
<i>v.</i>	
C. D., <i>Defendant</i> .	

The plaintiff and —, his surety, hereby undertake,

for themselves and each of them, their and each of their heirs, executors and administrators, to make good all costs and damages which the defendant may sustain by reason of the wrongful suing out of the attachment this day issued against said defendant.

When the said affidavits and undertaking have been filed in the Clerk's Office, he shall issue the writ of attachment and garnishment as follows:

Form of Writ.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, THE
 ———DAY OF ———, 18—.

A. B., <i>Plaintiff,</i>	} At Law, No.—.
v.	
C. D., <i>Defendant.</i>	

The President of the United States to the Marshal for said District, greeting:

You are hereby commanded to attach, seize, and take into your custody, the defendant's lands, goods, chattels, and credits, which shall be found in this District, to the value of \$——, the amount of the plaintiff's demand against the defendant, as shown by his affidavit, duly supported and filed, and claimed in his declaration; and the further sum of \$——, for the costs and charges which may accrue in the premises; and the same, so attached, safely keep, subject to the orders of the court, unless the defendant deliver to you, to be filed herewith, his undertaking, with sufficient surety or sureties, to satisfy and pay the final judgment of the court against him. And, should you attach the defendant's goods, chattels or credits in the possession of any other person, warn him to appear before said court at its first special term after service of this writ on him, to show cause why said goods, chattels and credits so attached should not be condemned and execution thereof made.

Witness, ———, *Chief Justice.*

———, *Clerk.*

Form of Defendant's Undertaking.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, THE
 — DAY OF —, 18—.

A. B., *Plaintiff*,
 ^{v.}
 C. D., *Defendant*. } At Law, No.—.

The defendant and —, his surety, hereby undertake, for themselves and each of them, their and each of their heirs, executors and administrators, to satisfy and pay the final judgment of the court against them, in consideration of the discharge from the custody of the marshal of the thing seized by him upon the attachment sued out against said defendant on the — day of —, 18—, in the above-entitled cause.

In all cases of attachment the plaintiff may exhibit interrogatories in writing to the garnishee concerning the property of the defendant in his possession or charge, or by him due or owing, at the time of serving such writ of attachment, or at any other time, and the garnishee shall file his answer under oath to such interrogatories, within ten days from the date of the service of such interrogatories upon him.

And if such garnishee shall neglect or refuse so to do, then, at the time of rendering judgment against the defendant, when he has been summoned, or after due notice by publication, when he has been returned not to be found, the court shall adjudge that he has in his possession property of the defendant to an amount sufficient to pay the debt, interests and damages of the plaintiff, and costs; and execution shall issue as in other cases of condemnation of property or credits in the hands of garnishees, provided, that a copy of this rule be served with such interrogatories.

And if it shall appear from the garnishee's answer to interrogatories, or by verdict of a jury, that he has in his possession goods or credits of the defendant, then, at the time of rendering judgment against the defendant, or after due publication against him, as aforesaid, judgment may be rendered condemning said property or credits, and execution may issue thereon as in other cases of condemnation.

Form of Interrogatories to be answered by the Garnishee.

1. Whether he is or was at the time of the garnishment, indebted to the defendant? If so, how, and in what amount?

2. Whether he has now, or had at the time of serving the notice, or has had at any time between the date of service and the time of answering, any goods, chattels, or credits of the defendant?

3. Whether there are, to his knowledge, or belief, any, and what goods, chattels or credits of the defendant in the possession or under the control of any other, and what person?

And such other interrogatories as the plaintiff may think proper to propound within the limits of this rule.

ATTACHMENT FOR RENT.

Rule 17.

In case a landlord files his declaration to recover rent, he may sue out an attachment at the time of filing said declaration, or afterwards, pending the suit, to enforce his lien upon such of his tenant's personal chattels upon the premises as are subject to execution for debt. But the clerk shall not issue this attachment unless the plaintiff file in his office, as a step in his action, an affidavit to the effect—

That the rent claimed is due and unpaid; or, if not due, that the defendant is about to remove or sell all or some of said chattels.

Thereupon the clerk shall issue a writ of attachment, as follows:

Form of Writ of Attachment and Garnishment, for Rent.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, THE
— DAY OF —, 18—.

A. B., <i>Plaintiff</i> ,	} At Law, No.—.
<i>v.</i>	
C. D., <i>Defendant</i> .	

The President of the United States to the Marshal for said District, greeting:

You are hereby commanded to attach, seize, and take into

your custody, such of the defendant's personal chattels as are subject to the plaintiff's lien for rent of the premises held by the defendant as plaintiff's tenant, to the value of \$——, the amount of the plaintiff's demand against the defendant for said rent, as shown by the plaintiff's affidavit in the cause, and as claimed in his declaration. And should you attach said chattels in the hands of any other person, warn him to appear before said court, at its first special term after service of this writ on him, to show cause why said chattels, so attached, should not be condemned towards satisfaction of the plaintiff's demand.

Witness, —— —, *Chief Justice.*

—— —, *Clerk.*

WRIT OF REPLEVIN.

Rule 18.

At the time of filing his declaration in replevin, the plaintiff, his agent, or attorney, must file an affidavit, sworn to before the clerk, stating :

1st. That according to affiant's information and belief, the plaintiff is entitled to recover possession of the chattels proposed to be replevied, being the same described in the declaration.

2d. That the defendant has seized and detains, or detains the same.

3d. That said chattels were not subject to such seizure or detention, and were not taken upon any writ of replevin.

The plaintiff shall also, at the same time, enter into an undertaking with surety approved by the clerk, in the following form :

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, THE
—— DAY OF ———, 18—.

A. B., <i>Plaintiff,</i>	} At law, No.—.
<i>v.</i>	
C. D., <i>Defendant.</i>	

The plaintiff, and ———, his surety, appear, and submitting to the jurisdiction of the court, hereby undertake for themselves, and each of them, their and each of their heirs, executors and administrators, to abide by and perform the judgment of the court in the premises, which judgment may be rendered against all the parties whose names are hereto affixed.

Upon filing said undertaking, the clerk shall issue a writ of replevin as follows :

Form of Writ of Replevin.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, THE
 ——— DAY OF ———, 18—.

A. B., *Plaintiff*,
 v.
 C. D., *Defendant*. } At law, No.—.

The President of the United States to the Marshal of said District, greeting :

The plaintiff in this action having entered into an undertaking, with surety as required by law, you are therefore hereby commanded to take the goods and chattels claimed by the plaintiff, to-wit: [*describe them*] from the defendant, and deliver the same to the plaintiff. And warn the defendant to appear in said court, at the first special term thereof, occurring twenty days after service of this writ, and answer said action, and that if he make default in so doing, the plaintiff may proceed to judgment and execution.

Witness, ———, Chief Justice of said court.

—————, *Clerk.*

SPECIAL REMEDIAL WRITS.

Rule 19.

Motions or applications for special remedial writs, such as writs of *quo warranto*, *mandamus*, *certiorari*, *supersedeas*, &c., shall be heard by the circuit or criminal court, or before one of the justices at chambers, or in special term ; but not until a petition, verified by affidavit, and stating the grounds of the application, has been filed and docketed. But the justice to whom the application is made, may order it to be heard in the general term in the first instance. Motions to quash, set aside, or dissolve any of said writs, may be heard in the same manner. *By order of Court*, May 21st, 1869.

(See 1 Minutes General Term, 370.)

Proceedings to remove a justice of the peace must be commenced by filing and docketing, on the criminal side of the court, to be heard in the General Term, an information by the

District Attorney, in the name of the United States against the officer, setting forth the grounds of the complaint and supported by the affidavit of the relator or informer.

Certiorari Rule.

Ordered, That, hereafter, no *certiorari* shall issue to bring up a cause pending before any justice of the peace, on the ground of concurrent jurisdiction, unless the petitioner therefor shall present and file with the petition his affidavit, stating that his application is not for the purpose of delay, but solely because he believes he has a just and meritorious defence to the plaintiff's claim, either in whole or in part, and if to a part only, then how much thereof.

(June 15th, 1877. 3d Minutes General Term, p. 91.)

SERVICE OF PROCESS AND RETURN.

Rule 20.

By Marshal—Every writ, process, or notice issuing out of the clerk's office of this court shall be served by the marshal for the District of Columbia, or his deputy, if required, and the marshal's return shall be *prima facie* evidence of the facts it states.

Every writ issued out of the clerk's office to require the defendant's appearance to answer to an action shall be accompanied with a copy of the declaration and affidavit, if any, and of the notice thereto subscribed; and the defendant shall be served with said copies, and the marshal's return shall show the fact.

Rule 21.

By Publication—Publication may be substituted for personal service of process upon any defendant who cannot be found, in suits for partition, divorce, by attachment, for the foreclosure of mortgages and deeds of trust, and for the enforcement of mechanics' liens, and all other liens against real or personal property, and in all actions at law or in equity which have for their immediate object the enforcement or establishment of any lawful right, claim, or demand to or against any real or personal property within the jurisdiction of the court.

(§ 7 Act 1867, ch. 64.)

No order for the substitution of publication for personal service shall be made until a summons for the defendant shall have been issued and returned "not to be found."

Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court, or by any order of Court, shall be published in the Washington Law Reporter, during the time required by law, in addition to any other papers which may be specially ordered, or which may be selected by the parties.

(Minutes General Term, May 10th, 1876.)

Form of Order.

In such case the following is the form of the order of court which is to be published :

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, THE
 ——— DAY OF ———, 18—.

A. B., <i>Plaintiff</i> ,	} At Law. [In Equity.] No. —.
v. .	
C. D., <i>Defendant</i> .	

On motion of the plaintiff, by Mr. ———, his attorney, it is ordered that the defendant cause his appearance to be entered herein on or before the first rule day, occurring forty days after this day; otherwise the cause will be proceeded with as in case of default. A true copy. Test :

———, *Clerk*.

Proof of Publication.

The evidence of the publication shall be an affidavit of the publisher, accompanied by a copy of the order as published, which affidavit shall state how many, and at what, times the order was inserted in the paper.

ISSUES OF FACT AGREED.

Rule 22.

After return of service of the declaration and summons, if the parties to the action are agreed as to any matter or matters of fact to be decided between them, they may state the same for trial in an issue in the following form :

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, THE
 ——— DAY OF ———, 18—.

A. B., *Plaintiff*,
 v.
 C. D., *Defendant*. } At law. No. —.

The ——— affirms, and the ——— denies, that [*here state the question or questions of fact to be tried.*] And the court orders that the said question shall be tried by jury.

The parties may agree in writing, if they please, that, upon the finding of a jury upon such issue, in the affirmative or negative, a sum of money fixed by them, or to be ascertained by the jury upon a question inserted in the issue for that purpose, shall be paid by one of the parties to the other with or without costs; and judgment shall be entered accordingly, unless otherwise agreed, or unless the court or a judge shall otherwise order, for the purpose of giving either party an opportunity for moving to set aside the verdict, or for a new trial.

The proceedings upon such issue shall be entered of record upon the minutes of the court, and the judgment shall have the same effect as any other judgment.

ISSUE OF LAW AGREED.

Rule 23.

After service of the summons and declaration, and before judgment, the parties may, with the assent of the court, make a special case for the opinion of the court without any pleadings subsequent to the declaration.

Upon the decision of every such special case, the successful party shall have judgment, including costs, unless the agreement otherwise direct.

PLEADING.

ORDER OF PLEADING.

Rule 24.

The order of pleading shall be :

1. To the jurisdiction.

2. To the disability of the plaintiff.
 3. To the disability of the defendant.
 4. To the declaration.
 5. In bar.
- } Abatement.

SIGNATURE OF PLEADINGS.

Rule 25.

Every pleading shall be signed by the party or by counsel; showing, in this way, whether the party appears in person or by an attorney, and not by stating the fact in the body of pleading.

TIME OF PLEADING.

Rule 26.

If the defendant appear, he shall demur, or plead and serve a copy of his pleading upon the opposite party on or before the first day of the first special term of the court, occurring twenty days after service of the process, otherwise the plaintiff may have judgment by default. And a copy of every plea and of every subsequent pleading shall be served by the party filing it, on the opposite party or his attorney, at the time of filing it.

ENLARGING TIME OF PLEADING.

Rule 27.

Upon application of either party, for good cause shown, the court may enlarge the time of pleading, and may excuse a failure to plead within the prescribed time.

DECLARATION.

Rule 28.

The declaration shall state only the substantive facts necessary to constitute the cause of action, without unnecessary verbiage and with substantial certainty.

PLEA.

Rule 29.

Every plea shall set forth the true defence upon which

the defendant supposes he may defeat the plaintiff's action. It may deny all, or any particular material allegation, of the declaration, or it may confess and avoid ; and so of the replication as to the plea.

Rule 30.

No formal conclusion or prayer for judgment shall be necessary in any pleading.

REPLICATION, &C.

Rule 31.

After plea filed and served, the plaintiff shall reply, and after replication filed, the defendant shall rejoin, and so on till issue is joined, within ten days after the last pleading filed, excluding the day of such filing ; otherwise, on motion and notice thereof, the suit may be dismissed, or judgment taken by default, according as the failure is by the plaintiff or defendant.

NEW ASSIGNMENT.

Rule 32.

One new assignment only shall be pleaded to any number of pleas to the same action ; and such new assignment shall be consistent with, and confined to, the particulars delivered in the action, if any, and shall state that the plaintiff proceeds for causes of action different from those which the plea professes to justify, or for an excess over and above what all the defences set up in such plea justify, or both.

JOINDER IN ISSUE.

Rule 33.

The joinder in issue may be :

The plaintiff joins issue upon the defendant's first plea.

The defendant joins issue upon the plaintiff's replication to the first plea.

And this form of joinder shall be deemed to be a denial of the substance of the pleading to which it relates, and an issue thereon.

DEMURRER.

Rule 34.

The form of a demurrer shall be as follows, or to the like effect :

The defendant says that the declaration is bad in substance.

And in the margin thereof some substantial matter of law intended to be argued, shall be stated, and a demurrer without such statement, or a frivolous statement, may be set aside by a judge at chambers, or by the court, and leave given to enter judgment as for want of plea.

JOINDER IN DEMURRER.

Rule 35.

The form of a joinder in demurrer shall be as follows, or to the like effect :

The plaintiff says that the declaration is good in substance.

PLEA AFTER LAST CONTINUANCE.

Rule 36.

If a matter of defence has arisen since the last pleading filed, the party may plead the same instead of his former defence.

Form of such Plea.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, THE
— DAY OF — 18—.

A. B., <i>Plaintiff</i> ,	} At law, No. —.
<i>v.</i>	
C. D., <i>Defendant</i> .	

The defendant says that after the alleged claim accrued, and after the last pleading in this action, that is to say, on the — day of —, 18—, the plaintiff by deed [*or otherwise as the law may permit*] released the defendant from the said alleged claim.

Unless the court or a judge otherwise order, the plea must be accompanied with an affidavit of the truth of it, which may be in the following form :

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, THE
 — DAY OF —, 18—.

A. B., *Plaintiff*,
 v.
 C. D., *Defendant*. } At law, No. —.

The defendant makes oath and says that, the plea hereunto annexed is true in substance and fact.

Rule 37.

The plaintiff shall reply within five days after service of the plea upon him; and the defendant shall rejoin within two days after service of the replication, otherwise judgment.

AGREED CASE AFTER ISSUE JOINED.

Rule 38.

After issue joined, the parties may, by consent of the court, state the facts in a special case for the opinion of the court, and judgment shall be entered for the plaintiff or defendant, according to the decision of the court.

NOTICE TO ADMIT DOCUMENTS.

Rule 39.

Either party may call on the other party by notice to admit any document, saving all just exceptions. In case of neglect or refusal to admit, the cost of proving the document shall be paid by the party so neglecting or refusing, whatever the result of the cause may be, unless at the trial the judge certify that the refusal to admit was reasonable.

The following shall be the form of a notice to admit:

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

A. B., *Plaintiff*,
 vs.
 C. D., *Defendant*. } At law, No. —.

Take notice that the plaintiff [*defendant*] in this cause proposes to adduce in evidence on the trial thereof the several documents hereunder specified, and that the same may be inspected by the defendant, [*plaintiff*] his attorney or agent, at —, on the — day of —, 18—, between the hours of

— and —; and that the said defendant [*plaintiff*] will be required to admit that such of said documents as are herein specified to be originals were respectively written, signed, or executed as they purport, respectively, to have been; that such as are specified as copies are true copies; and such documents as are stated to have been served, sent, or delivered, were so served, sent, or delivered, respectively, saving all just exceptions to the admissibility of all such documents as evidence in this cause. Dated this — day of —, 18—.

—, *Attorney for Plaintiff.*

To Mr. —, *Attorney for Defendant.*

ORIGINALS.

Description of Documents.	Date.

COPIES.

Description of Documents.	Date.	Original or duplicate served, sent or delivered, when, how and by whom.

If the party to whom the notice is addressed make the admission, it may be endorsed on or subscribed to the notice, as follows:

I consent to make the admission required in the within notice.

[January —, 18—.]

Plaintiff's [Defendant's] Attorney or Agent.

I consent to admit the documents numbered 1, 2, 3, 4, in the within notice.

[January —, 18—.]

If the admission be special, it may be made in a separate paper, as follows:

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, THE —
DAY OF ———, 18—.

A. B., *Plaintiff*, }
v. } At law, No. —.
C. D., *Defendant*. }

I do hereby, as the attorney [*agent*] for the above-mentioned defendant, [*plaintiff*] agree to admit in evidence, on the trial of the cause, the paper writing hereto annexed, marked A, as and to be a true copy of [*state of what, but more fully than in the notice ;*] and I do also hereby agree, as such attorney, to admit in evidence on such trial the paper writing hereto annexed, and marked B, as and to be a true copy, &c.

PRODUCTION OF BOOKS AND WRITINGS.

Rule 40.

A party to an action at law, having in his possession or power books or writings containing evidence pertinent to the issue, may be required by order of the court to produce the same on the trial, on motion and due notice thereof being given, in cases and under circumstances where parties might be compelled to produce the same by the ordinary rules of proceeding in chancery.

The motion must be made in writing, filed in the cause, and it must set forth a descriptive list of the books and writings to be produced.

If the court order the production of the books and writings specified in the motion, a copy of the order and list, made by the clerk and duly certified, shall be served on the party in question two days before the day on which he shall be required to produce the books and writings.

It shall be deemed a compliance with the order to file the books and writings in the Clerk's Office by the time therein specified.

On application of the party served with the notice to the court, or to a judge in vacation, the time to comply with the order may be enlarged.

If a plaintiff fail to comply with such order, the court may, on motion, give the like judgment for the defendant as in case of non-suit.

If a defendant fail to comply, the court may, on motion, give judgment against him by default. 1789, c. 20, § 15.

EXAMINATION OF PARTIES—INSPECTION OF DOCUMENTS.

Rule 41.

During the preparation of a suit, either party may have leave, on application to the court, or one of the justices, upon reasonable notice, to examine his adversary, orally, or by interrogatories, on oath or affirmation, before an examiner, or commissioner of the court; but the answers obtained shall not be read on the trial unless the party has died or become permanently sick.

Either party may obtain leave, in like manner, to inspect material documents in the hands of his opponent, or to examine him so as to discover whether such documents exist.

The leave specified in the two last paragraphs must be applied for, upon affidavit, showing the materiality of the expected disclosures or documents.

NOTICE OF TRIAL.

Rule 42.

At any time after issue joined, and at least ten days before the sitting of the court at which the cause stands for judgment or trial, either party may give notice of trial.

Form of Notice of Trial.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, THE ———
DAY OF ———, 18—.

Between { A. B., *Plaintiff*,
 and
 C. D., *Defendant*. } At law, No. —.

Take notice that the issue joined in this cause will be tried at the next term of this court.

P. Q., *Attorney for Plaintiff*.

To Mr. P. D., *Attorney for Defendant*.

NOTE OF ISSUE.

Rule 43.

The party giving the notice of trial shall furnish the clerk,

at least four days before the sitting of the court, with a note of the issue containing—

1. The title of the action ;
2. The names of the attorneys ; and
3. The time when the last pleading was filed.

TRIAL CALENDAR.

Rule 44.

And the clerk shall thereupon enter the cause upon a calendar, according to the date of the issue.

Rule 45.

Any case may, by consent of the parties or their counsel, be placed on the trial calendar at any time before the commencement of the trial term, or afterward, with the assent of the court.

Rule 46.

A case once placed on the trial calendar, if not tried at the first term, shall stand for trial on the next trial calendar, &c., according to the date of the issue, without any further notice or act of the parties.

ISSUES—BEFORE WHOM TRIED.

Rule 47.

All issues of fact triable by a jury or by the court shall be tried before a single justice.

When the trial is by jury it shall be at a circuit court.

When the trial is without jury, it shall be at the circuit court or at a special term.

Issues of law may be heard and determined at a circuit court or at a special term. Demurrers may be heard on any motion day, after five days' notice.

CONSOLIDATION OF CAUSES.

Rule 48.

Before trial, separate actions brought by the same plaintiff against separate underwriters of the same risk or peril, or against makers and endorsers and acceptors of negotiable secu-

rities, or against joint and several obligors or covenantors, or cross-actions on matters of account, and the like, may be consolidated and tried together.

TRIAL.

DIFFERENT CAUSES OF ACTION—HOW TRIED.

Rule 49.

If several causes of action be stated in the declaration, and it be inexpedient to try them together, the court may try each or as many of them separately as it deems convenient.

NON-APPEARANCE OF PARTIES AT THE TRIAL.

Rule 50.

When a cause is reached in the regular call of the calendar, and neither party appears, the case may be dismissed at the cost of the plaintiff.

Rule 51.

If there be no appearance for the plaintiff when the case is called for trial, the defendant may have the plaintiff called and dismiss the suit, or he may have a trial.

Rule 52.

If the defendant fail to appear when the cause is called for trial, the plaintiff may have him called, and take a judgment by default.

REFERENCE TO ARBITRATORS.

Rule 53.

A cause at issue, whether upon the trial calendar or not, may, by consent of the parties, by an order of court, be referred to arbitration; and if the reference be ordered after the commencement of the trial, the jury shall be discharged, and the cause shall be continued until the award is returned.

The party in whose favor the award is given shall cause a copy thereof to be delivered to the adverse party, or his attorney, at least three days before moving for judgment thereon; and no judgment shall be entered but upon the order of the

court, nor, unless by consent, till the court is satisfied of the service of a copy of the award, as aforesaid, by the party's affidavit, or by return of the marshal, or by admission of the opposite party.

If no award is returned within eight months after the reference, the court may order the referee to return it, or give his reasons for not returning it, or may vacate the reference and proceed with the cause as if no reference had been made. (Maryland Act of November, 1785, c. 80, § 11.)

If either party die before the award is returned and judgment thereon, the arbitrator may proceed to make an award, after reasonable notice to the person succeeding to the interest of or representing the deceased, in the thing or matter in contest, not being a minor; and a judgment upon such award shall be good and sufficient, notwithstanding such death. *Id.*

REFERENCE TO AUDITOR.

Rule 54.

In actions at law, brought or hereafter to be brought, grounded upon an account, or in which it may be necessary to examine and determine upon accounts between the parties, the court, in its discretion, at any stage of the case, may order the accounts and dealings between the parties to be audited and stated by the auditor of the court, or by a special auditor or auditors to be appointed by the court; and when such order shall be made, in any case, the course of proceeding before such auditor or auditors shall be the same therein, and such auditor or auditors shall have the same powers and duties in the premises as in similar cases referred to the auditor in chancery by the court, sitting in equity. When such audit shall be completed the auditor or auditors shall state and file the report and account in the clerk's office and give notice thereof to the parties or their attorneys, and the clerk shall note the time the same is filed in the docket; and at the expiration of thirty calendar days thereafter, judgment may be entered on motion of either party in accordance with such report and account, either by the court or by a judge at chambers, unless exceptions are filed thereto within said time for errors of law or of fact therein; and the party so except-

ing shall state therein definitely, in precise and distinct terms, the grounds of such exceptions, and shall point out particularly the item or items in such report and accounts to which they are taken, and shall annex thereto a certificate of counsel that, in his opinion, the matters of law therein stated are well founded in law; and an affidavit that such exceptions are not interposed for delay and that they are true in point of fact; and shall serve a copy thereof on the opposite party or his attorney.

When such exceptions are so filed the court shall then enter the case on the trial calendar of the term in its proper place and the issues made by such exceptions shall be tried and determined in the same manner as issues at law; and any part of such report and accounts not so excepted to shall be adjudged to be conclusive between the parties on such trial.

If only general, immaterial or frivolous exceptions are made; or if they are filed without the certificate of counsel and affidavit of exceptant and service of copy as aforesaid, they may be overruled by the court or by a judge at chambers on notice and motion, and judgment entered as if no exceptions had been filed.

As amended May 7th, 1883, M. 4, p. 440.

Rule 55.

If the suit be against an administrator or executor, for debt or damages, and the real debt or damages is ascertained by the jury, their verdict shall be entered in the minutes of the court; and it shall be referred to an auditor to ascertain the sum for which judgment shall be given.

REPLEADER.

Rule 56.

If it appear at the trial that the pleadings have miscarried—that is, failed to raise material issues, on which may be decided the real questions in dispute between the parties—the court shall then and there order them to be amended.

VERDICT.

Rule 57.

A general verdict shall be recorded thus: "On their oath

say they find the issue aforesaid in favor of the plaintiff, and that the money payable to him by the defendant by reason of the premises, is the sum of \$———, besides costs." If the action be founded on contract, the verdict shall proceed—"with lawful interest from the — day of ———, 18—, besides costs." (2 Sts., 756, c. 106, § 6.)

If the verdict be for the defendant, then: "On their oath say they find for the defendant," unless, upon set-off pleaded, a balance is found due the defendant, and then the verdict shall proceed—"and that the money payable to him by the plaintiff, by reason of the premises, is the sum of \$———, with interest from the — day of ———, 18—, besides costs."

If there be several counts in the declaration, and the jury find for the plaintiff on some, and for the defendant on the rest, the verdict shall be entered thus: "On their oath say they find for the plaintiff on the first, second, and fourth issues, and that the money payable to him by the defendant, by reason thereof, is the sum of \$———, [with interest from the — day of ———, 18—,] besides costs; and for the defendant on the third, fifth, and sixth issues."

SPECIAL VERDICT.

Rule 58.

If the parties elect to have a *special verdict* taken, then the jury shall state all the facts as they find them proved, with certainty and precision, and then add, "but they are ignorant, in point of law, on which side they ought, upon these facts, to find the issue; and if, upon the whole matter, the court shall be of opinion that the issue is proved for the plaintiff, they find for the plaintiff accordingly; and that the money payable to him by the defendant is the sum of \$———, [with interest from the — day of ———, 18—,] besides costs; but if the court be of an opposite opinion, then they find for the defendant;" all which shall be entered upon the minutes of the court, and constitute part of the record of the cause.

VERDICT SUBJECT TO OPINION OF COURT.

Rule 59.

When a verdict is taken, subject to the opinion of the

court, it shall be entered as follows : “ Upon their oath say they find in favor of the plaintiff ; and that the money payable to him by the defendant is the sum of \$——, [with interest from the — day of ——, 18—,] besides costs ; if the court be of the opinion that he ought to recover against the defendant upon the facts submitted to us upon the trial, which facts were as follows : ” [*State the facts found by the jury.*] “ But upon these facts, if it be the opinion of the court that the plaintiff ought not to recover against the defendant, then we find in favor of the defendant.”

MOTIONS FOR A NEW TRIAL.

Rule 60.

Motions for a new trial, which are designed to set aside a verdict and procure a new trial of a case, are of two kinds, to wit :

1. Those which are grounded upon alleged errors of law by the justice presiding, in his rulings during the trial in admitting or excluding evidence, or in his instructions to the jury ; these motions must be made upon a bill of exceptions, and are to be heard in the General Term in the first instance. But the justice who tried the cause may, in his discretion, entertain a motion on exceptions taken at the trial, to set aside the verdict for error in law.

2. Those which are grounded upon the following and similar allegations :

(1.) That the party moving for the new trial had no notice and did not appear at the trial.

(2.) Misbehavior of the successful party.

(3.) Misbehavior of the jury.

(4.) That the verdict is contrary to the evidence.

(5.) That the verdict is unreasonable or uncertain.

(6.) That the verdict was obtained by surprise.

(7.) That a new and material fact, unknown at the time of the trial, and not ascertainable by reasonable diligence by the party moving, has come to light since trial, and the like.

These motions are addressed to the discretion of the justice presiding at the trial and are not appealable.

Rule 61.

Every motion for a new trial shall be in writing, and shall state in separate paragraphs, successively numbered, the grounds upon which it is based ; and it shall be entered on the minutes of the court on the day it is presented to the court.

All motions for a new trial must be made within four days after verdict.

Rule 62.

No motion for a new trial on a bill of exceptions shall suspend the entry of judgment, or the issuing and levy of execution ; but a stay of execution shall be entered if the party making the motion shall within ten days after judgment, execute and file in the cause an undertaking with one or more sureties, to be approved by the court, or a justice thereof, in the form provided for in Rule No. 91 in cases of appeal, and the court may, upon cause shown and notice, stay execution within the ten days and enlarge the time for filing the undertaking.

No motion for a new trial for any other cause shall suspend the entering of judgment and issuing of execution, unless the party moving shall, within ten days after verdict, execute and file in the cause an undertaking, with one or more sureties, to be approved by the court or a justice thereof, in the following or equivalent form :

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, THE
 ——— DAY OF ———, 18—.

A. B., <i>Plaintiff</i> ,	} At law, No. —.
v.	
C. D., <i>Defendant</i> .	

The defendant [*plaintiff*] having filed a motion for a new trial in this cause, and desiring to suspend the entry of judgment and the issuing and levy of execution on the verdict therein, and ——— ———, his surety, for themselves and each of them, their and each of their heirs, executors, and administrators, appearing now and submitting themselves, by this undertaking, to the jurisdiction of the court, hereby undertake to abide by, perform, and pay its judgment in said cause, which may be entered against each of them on the overruling of said motion.

Where the verdict is not for a specific sum of money, the amount and character of the security to be given to suspend the entry of judgment, as above, shall be determined by an order of any justice of the court.

Rule 63.

Upon the overruling of this motion, judgment shall be entered up against the moving party and his surety, and execution shall issue thereon.

All motions for new trials not heard and decided at the term at which the same shall have been made, shall be deemed to have been overruled, and shall be so entered on the proceedings of the last day of the term, unless the motion has been continued by special order of court.

EXCEPTIONS.

Rule 64.

If a party proposes to have errors of law in the rulings or instructions of the justice presiding, reviewed, either in the General Term or in the Supreme Court of the United States, he must, at the trial and before verdict, except to such rulings or instructions; and he may, at the time of taking exception, reduce the same to writing in a formal bill of exceptions, or the justice may enter the exception upon his minutes, and proceed with the trial, and afterwards settle the bill of exceptions.

Rule 65.

The bill of exceptions must be settled before the close of the term, which may be prolonged, by adjournment, in order to prepare it.

Rule 66.

Every bill of exceptions shall be drawn up by the counsel of the party tendering it, and submitted to the counsel on the other side; and where the bill of exceptions is not settled before the jury retires, the counsel tendering the bill of exceptions shall give notice in writing to the counsel on the other side, of the time at which it is proposed that the bill of exceptions shall be settled, and shall also, at least three days, Sun-

days exclusive, before the time designated on such notice, submit to the counsel on the other side, the bill of exceptions so proposed to be settled; and if they cannot agree, it shall be settled by the justice who presided at the trial; and in that case, the justice shall be attended by the counsel on both sides, as he may direct.

As amended May 7th, 1877. See 3 Minutes General Term, 57.

IF NOT SETTLED, NEW TRIAL TO BE GRANTED.

Rule 67.

In case the judge is unable to settle the bill of exceptions, and counsel cannot settle it by agreement, a new trial shall be granted.

TO BE MADE PART OF RECORD.

Rule 68.

In every case, the fact of the settling and filing of the bill of exceptions, and that it is made part of the record, shall be noted in the minutes of the court.

ARREST OF JUDGMENT.

Rule 69.

If a motion for a new trial, under second paragraph of Rule 60, or a motion for a new trial on exceptions entertained by the judge who tried the case under the first paragraph of Rule 60, be overruled and the court decide that the verdict shall stand, then the party may move in arrest of judgment.

This motion shall be made in writing, signed by counsel, and be made of record on the minutes of the court, and it shall state the reason or reasons relied upon in support of it. If several reasons be assigned, they shall be set forth separately, and each shall be numbered.

No motion in arrest of judgment shall suspend the entry of judgment, and issuing and levy of execution, unless a similar undertaking to that hereinbefore provided in the case of motions for a new trial be executed and filed by the party moving. In case the motion be overruled, the party moving may appeal to the General Term, in which event he may further stay exe-

cution by executing and filing the undertaking prescribed in cases of appeals, which shall supersede the undertaking originally filed.

JUDGMENT.

Rule 70.

Whatever the cause of action may be, if the judgment be for the recovery of money, it shall be awarded generally without any distinction of debt from damages—thus: “It is considered that the plaintiff recover against the defendant \$——, [with interest as aforesaid] being the [money payable by him to the plaintiff by reason of the premises, and \$—— for his costs of suit, and that he have execution thereof.”

Rule 71.

Judgment is for the plaintiff—

(1.) On default of appearance by the defendant.

(2.) On defendant's confession, as by saying nothing, or by confession of errors.

Or it is for the defendant—

(1.) That the suit be discontinued.

(2.) That the plaintiff be nonsuited.

Or for either party—

(1.) On demurrer.

(2.) On issue of, “No such record.”

(3.) On verdict, or—

(4.) On case agreed.

JUDGMENT BY DEFAULT.

Rule 72.

Generally.—If the defendant, served with copies of the declaration, notice to plead and summons, fail to appear and plead, according to said notice, a judgment by default for non-appearance may be entered against him at the appearance term by the circuit court, or at special term, which judgment may be set aside during said appearance term, or within the first four days of the next trial term, upon the defendant's offering a plea, verified by his affidavit, setting up a defence considered by the justice sufficient, if proved, to bar the action in whole or in part.

Rule 73.

In actions ex contractu.—In any action arising *ex contractu*, if the plaintiff or his agent shall have filed, at the time of bringing his action, an affidavit, setting out distinctly his cause of action, and the sum he claims to be due, exclusive of all set-offs and just grounds of defence, and shall have served the defendant with copies of his declaration and of said affidavit, he shall be entitled to a judgment for the amount so claimed, with interest and costs; unless the defendant shall file, along with his plea, an affidavit of defence, denying the right of the plaintiff as to the whole or some specified part of his claim, and specifically stating also, in precise and distinct terms, the grounds of his defence, which must be such as would, if true, be sufficient to defeat the plaintiff's claim, in whole or in part. And where the defendant shall have acknowledged, in his affidavit of defence, his liability for a part of the plaintiff's claim, as aforesaid, the plaintiff, if he so elect, may have judgment entered in his favor for the amount so confessed to be due.

Rule 74.

If there are several defendants in an action *ex contractu*, judgment by default may be taken against such of them as fail to appear, and the plaintiff may proceed to trial and judgment against the others.

Rule 75.

If the cause of action be an unliquidated sum of money, claimed upon a contract, or for a wrong unconnected with contract, the court shall award an inquiry by the jury in attendance of the amount claimed in the following cases:

(1.) If the defendant fail to plead to the declaration; that is makes default.

(2.) If he acknowledge the plaintiff's demand to be just; that is, confesses judgment.

(3.) When his attorney declares that he has no instructions to say anything in answer to the plaintiff, or in defence of his client.

(4.) When a demurrer to the plaintiff's declaration is overruled, unless there be leave to plead over.

In executing such inquiry in the presence of the court, the

jury need not draw up and sign and seal an inquisition, but shall merely ascertain the amount payable by the defendant to the plaintiff for the cause of action stated in the declaration; and their verdict shall be announced and made of record on the minutes of the court in the same way as upon an issue joined.

Rule 76.

On Attachment and Garnishment.—If the summons accompanying the attachment has been returned “not to be found,” and an order for the defendant’s appearance has been made and published, and the return upon the attachment is that the defendant’s lands, or his goods and chattels in the possession of a third person have been seized, and no cause be shown to the contrary, the judgment shall be simply a condemnation of the property attached and an award of execution.

Rule 77.

If the return upon the attachment be that a credit of the defendant has been attached in the hands of a designated person, and that he has been warned to appear, as the writ commands, if he fail to appear there may be judgment of condemnation of the credit, and an award of an inquisition to ascertain the amount of it.

Rule 78.

If in proceedings against any real or personal property of the defendant, within the jurisdiction of the court, the summons has been returned “not to be found,” and a day has been fixed by order of the court for the defendant’s appearance, and duly published, a judgment by default for non-appearance may be entered against the defendant, as in case of failure to appear after personal service of the summons. (14 Sts., 403, §§ 7, 8.)

Rule 79.

In Replevin.—And in the same manner a judgment by default against a defendant in replevin may be entered, by publication of a notice that an order has been made fixing a day for his appearance, upon his failure to appear pursuant to the notice. (14 Sts., 495, § 14.)

Rule 80.

A judgment by default may be taken against a defendant in ejectment in the manner prescribed in Rule 72, in relation to judgments by default generally.

JUDGMENT ON VERDICT OR ON AUDITOR'S REPORT OF ASSETS.

Rule 81.

In Case of Set-off.—Upon the trial of an issue upon the plea of set-off, judgment shall be for the balance found due, whether to the plaintiff or defendant, with costs. (14 Stat., 403, § 6.)

Rule 82.

If the declaration state a cause of action of which the court has jurisdiction, but the verdict find the money payable by the defendant to the plaintiff to be less than the lowest sum of which the court has jurisdiction, the plaintiff shall have judgment for the amount found due to him from the defendant, but without costs. (14 Stat., 406, § 22.)

Rule 83.

On Auditor's Report of Assets.—In an action against an administrator or executor, if, on reference to the auditor to ascertain the sum for which judgment shall be given, he report the assets in the hands of the defendant to be less than the real debt or damages found by the jury, the judgment shall be that the plaintiff recover against the defendant the amount found by the auditor, and then it shall go on to say: "And it is further considered that the plaintiff is entitled to such further sum as the court shall hereafter assess on discovery of further assets in the defendant's hands."

At any time afterwards, when applied to by the plaintiff, upon a three days' notice to the defendant or his attorney, the court may assess (by reference to the auditor) and give judgment for such further proportionable sum as the plaintiff shall appear entitled to, regard being had to the amount of the debt and other claims.

And, on any judgment so rendered an execution may issue against the defendant, and either his own goods or the goods

of the deceased may be thereon taken and sold. (Maryland Act of November, 1798, ch. 101, sub-chapter 8, § 9.)

JUDGMENT ON AWARD.

Rule 85.

Whenever an award has been returned by the arbitrator, and approved by the court, in the manner directed by Rule 53, judgment shall be entered thereon.

COSTS.

Rule 86.

The defendant may move the court to limit the plaintiff's recovery of costs to those of a single action, when he has prosecuted several actions against separate defendants, who might have been joined in one action or process.

Rule 87.

The defendant may move to have costs imposed upon an attorney or proctor, who shall appear to have multiplied proceedings in a cause, so as to increase costs unreasonably and vexatiously. (1813, c. 14, § 1.)

Rule 88.

A party who has refused to admit documents which have been proved at the trial, shall be adjudged to pay the costs of such proof, unless it appear to the court that his refusal was reasonable. (Rule 39.)

MEASURES FOR STAYING EXECUTIONS.

Rule 89.

After judgment is entered in the circuit court, or at a special term, execution may be issued, unless the party condemned move to vacate it or set it aside for fraud, deceit, surprise, or irregularity, or resort to a review of it before the General Term.

MOTION TO VACATE JUDGMENT.

Rule 90.

This motion will not be entertained, if made after the

defendant has taken any fresh step after the knowledge of the irregularity, or surprise, or fraud, or deceit complained of; nor can it be made after execution executed, unless the defendant had no notice of the judgment.

The motion must be made in writing, and the grounds upon which it is founded must be sworn to by the mover, and supported by affidavits, or otherwise, as he may be advised; and a copy of the motion and accompanying papers must be served on the opposite party at least four days, Sundays excepted, before the day fixed for the hearing. (Maryland Act of November, 1787, ch. 9, § 6.)

APPEAL TO GENERAL TERM.

Rule 91.

Upon an appeal to the General Term, the court shall review the order, judgment or decree appealed from, and affirm, reverse or modify the same, as shall be just.

No order, judgment or decree of any of the courts held by a single justice of this court shall be reviewed in the General Term, unless the appeal be taken and perfected within thirty days after the order, judgment, or decree complained of shall have been made or pronounced.

No such appeal, except in cases in which the United States or the District of Columbia is appellant, shall operate as a stay of execution where the judgment is for a specific sum of money, unless the appellant, with one surety or more, to be approved by the court or one of the justices, within twenty days after the judgment or decree, execute and file in the cause an undertaking in the following form substantially:

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, THE
 — DAY OF —, 18—.

A. B., *Plaintiff*,
 v.
 C. D., *Defendant*. } At law, No. —.

The defendant [*plaintiff*] having appealed to the General Term from the judgment [*decree*] pronounced against him by the Circuit Court [*in the special term*] on the — day of — 18—, and —, his surety, for themselves and each of them,

their and each of their heirs, executors, and administrators, appearing and submitting to the jurisdiction of the said General Term, hereby undertake to abide by, perform, and pay its judgment [*decree*] which they agree may be pronounced against each and all of them.

In all other cases of appeal to the General Term, except in cases in which the United States is appellant, any justice of the court may determine, by order, to be entered upon the minutes of the court, the amount and character of the security to be given, which, in all cases, shall at least be sufficient to cover the costs of the appeal. (3 M. G. T., 409.)

HEARING BEFORE GENERAL TERM.

Rule 92.

(1.) In all law cases before the General Term the appellant or party bringing the case up, shall cause such portions of the record to be printed as it may be necessary for the court to have before it in reviewing the decision of the court below.

(2.) In all appeals from final decrees, rendered at Special Term, and all cases certified to the General Term, to be there heard in the first instance, the appellant or plaintiff shall cause to be printed an abstract of the pleadings ; not to exceed one-fourth the number of folios in the original pleadings ; and in all other equity appeals, and all other motions and proceedings certified to the General Term to be there heard in the first instance, whether at law or in equity, the appellant or party making the motion or instituting the proceeding certified up, shall cause to be printed such portions of the record as it may be necessary for the court to have before it in reviewing the decision appealed from or considering the motion or proceeding certified to be heard.

(3.) Ten printed copies of all papers hereinbefore required to be printed, shall be filed in the Clerk's Office for the use of the counsel and the court, before the first day of the term, on the calendar of which the case is entered, and the costs of such printing shall be taxed as costs in the case against the losing party.

(4.) In all cases in the General Term the counsel for the respective parties shall, before the argument, present to each

other and to the justices holding the court a printed brief of points and authorities.

(5.) In the event of a failure in any case to comply with the provisions of this Rule in regard to printing, the court may, on motion, order the case to be dismissed or otherwise disposed of; and the court or any justice thereof may, for sufficient cause shown, by special order, dispense with the application of this Rule in any particular case, upon motion and due notice thereof to the opposite party.

EXECUTION.

Rule 93.

If the judgment of the court be not suspended, superseded, or reversed by one or other of the methods mentioned in the preceding, execution thereon may issue, and all writs in execution of any judgment shall be made returnable within 60 days from the date of issuing the same.

Rule 94.

If the judgment be for the recovery of land, the same shall be carried into execution by a writ of possession, in the following form:

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, THE
 ——— DAY OF ———. 18—.

A. B., <i>Plaintiff</i> ,	} At law, No. —.
v.	
C. D., <i>Defendant</i> .	

The President of the United States to the Marshal for said District, greeting:

You are hereby commanded, without delay, to cause the plaintiff to have possession of [*describe the premises as they are described in the declaration*] according to his recovery thereof in this action. And do you return this writ into the clerk's office of said court immediately after you have executed it, and within sixty days, so endorsed as to show when and how you have executed the same.

Witness, ———, chief justice of said court.

Rule 95.

In other actions, when the judgment is that something special shall be done or rendered by the defendant, then, in order to compel him so to do, and to see the judgment executed, a special writ of execution shall issue to the marshal, according to the nature of the case.

Rule 96.

Thus, in replevin, if the judgment be that the plaintiff return the chattels or chattels in controversy, the following shall be the form of the writ of return:

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, THE
 ——— DAY OF ———, 18—.

A. B., <i>Plaintiff</i> ,	} At law, No. —.
v.	
C. D., <i>Defendant</i> .	

The President of the United States to the Marshal for said District, greeting:

You are hereby commanded that you cause to be returned to the defendant the same chattels which, by the original writ in this action, you took from him and placed in possession of the plaintiff, which chattels the defendant is to hold irrepleviable forever; and if you find that the plaintiff has eligned said chattels, then return the fact. And do you cause to be made of the goods and chattels, lands and tenements, of the said plaintiff in this District, §——, for damages, costs and charges by the defendant sustained, laid out and expended, as appears of record; and return this writ into the clerk's office, within sixty days, so endorsed as to show when and how you have executed it.

Witness, ———, chief justice of said court.

Rule 97.

In an action where money only is recovered, and not any specific chattels, the following shall be the form of the writs of execution:

FIERI FACIAS.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, THE
 — DAY OF —, 18—.

A. B., *Plaintiff*,
 v.
 C. D., *Defendant*. } At law, No. —.

*The President of the United States to the Marshal for said
 District, greeting :*

You are hereby commanded that of the goods and chattels, lands and tenements of the defendant, you cause to be made \$—, which the plaintiff lately in said court, in said suit, recovered against said defendant for so much money payable by him to the plaintiff, and the further sum of \$—, for his costs and charges by him about his suit expended, as appears of record; and return this writ into the clerk's office of said court within 60 days, so endorsed as to show when and how you have executed the same.

Witness — —, chief justice of said court.

— —, *Clerk*.

ATTACHMENT.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, THE
 — DAY OF —, 18—.

A. B., *Plaintiff*,
 v.
 C. D., *Defendant*. } At law, No. —.

*The President of the United States to the Marshal for said
 District, greeting :*

You are hereby commanded to attach the lands, tenements, goods, chattels and credits of the defendant, if to be found in this District, of value sufficient to satisfy the plaintiff's recovery against him in this court on the — day of —, 18—, of \$—, for money payable to him by the defendant, and \$— for costs of suit; and the same, so attached, safely keep and have before said court, at its first special term after said attachment, that the same may be condemned, unless sufficient cause be shown to the contrary; and if said goods, chattels or credits be attached in the hands or possession of any person

other than the defendant, notify such person to appear before said court at the time aforesaid, to show cause why the same should not be condemned and execution thereof had, according to law. And have then there this writ, so endorsed as to show when and how you have executed it.

Witness — —, chief justice.

— —, *Clerk.*

Rule 98.

The plaintiff, upon issuing such writ of attachment, may exhibit interrogatories to be answered by the garnishee within ten days after the service of the same upon him; and upon his failure to answer, judgment may be entered against him, at the term at which he is required to appear, for the full amount of the judgment.

If, by the answers of the garnishee, or by the verdict of a jury, it shall appear that he has property or credits of the defendant, judgment of condemnation of said property or credits shall be entered, but not for an amount in excess of the original judgment and the costs, and execution shall issue thereon.

MOTIONS.

ENUMERATED.

Rule 99.

The following are enumerated motions, and shall be heard in the general term, in the first instance:

Motions for a new trial upon a bill of exceptions;

Applications for judgment on a special verdict;

Applications for judgment on a verdict taken, subject to the opinion of the court;

Motions ordered, by the justice holding a circuit court or special term, to be heard in the general term in the first instance.

Rule 100.

The justice before whom a motion is made, whether at chambers or in court, may order such motion to be heard in the General Term in the first instance.

RECORDING.

Rule 101.

Every motion shall be entered on the minutes of the court, if made in term, and on the rule-book or order-book, if made in vacation; and shall, together with the papers on which it is founded, if made upon matters not already of record, be filed and preserved in the Clerk's Office; and if it relate to a cause depending in court, it shall be filed with the papers in the case, to which it relates, and numbered with the number of the same, and be noted on the docket.

Rule 102.

All moneys paid into court by virtue of orders of the court, in causes depending therein, shall be deposited and disbursed as required by Act of Congress, approved March 24, 1871. (17 Stat. p. 1.)

APPEALS FROM JUSTICES OF THE PEACE.

Rule 103.

If the justices of the peace, from whose judgment an appeal is prayed, refuse or neglect to file the papers in the case in the office of the clerk of this court, on or before the first day of the term, occurring ten days next after the rendition of his judgment, either party may have a *certiorari*, on application to the court by petition to command him to certify the papers into court.

If the justice disregard the *certiorari*, either party may move the court for process of contempt to enforce obedience to the writ.

Rule 104.

No appeal, except in cases in which the District of Columbia is appellant, shall be allowed from the judgment of a justice of the peace, unless the appellant, with sufficient surety or sureties, approved by the justice, enter into an undertaking to satisfy and pay all intervening damages and costs arising on the appeal.

Rule 105.

Such undertaking shall be entered into and submitted to

the justice for approval, where the appeal is to operate as a supersedeas, within six days, Sunday exclusive; and when the appeal is not to operate as a supersedeas, within ten days after the rendition of the judgment complained of.

And until the expiration of said six days, Sunday exclusive, no execution shall issue upon any judgment of a justice of the peace where an appeal may operate as a supersedeas.

Rule 106.

When a stay of execution is desired to a judgment of a justice of the peace without an appeal, the security shall be taken and entered within the time prescribed for entering the undertaking where an appeal is to operate as a supersedeas.

Rule 107.

Where any undertaking or security is to be approved by a justice of the peace, the proceedings shall be similar to those prescribed by Rule 116.

Rule 108.

As soon as the appellant shall have made the deposit for costs required by law, or obtained leave from one of the justices, or from the court, to prosecute his appeal without a deposit, the clerk shall docket the cause, and issue a summons for the appellee to appear at the next trial term of the court.

Rule 109.

If the appellant fail to prosecute his appeal, by making the deposit or obtaining the leave aforesaid, the appellee may make the deposit for costs, have the cause docketed, and move for affirmance of the justice's judgment; or he may have a trial of the cause upon its merits.

Rule 110.

The cause shall be docketed according to its title before the justice, thus :

A. B., <i>Plaintiff</i> , [<i>appellee.</i>]	} No. —.
v.	
C. D., <i>Defendant</i> [<i>appellant.</i>]	

Rule 111.

If the first summons for the appellee be returned "not to be found," another summons shall be issued, returnable to the special term then next, and if that be returned "not to be found," and the appellee shall not appear, the case may then be heard and determined in the same manner as if the appellee had regularly appeared. 1823, c. 24, § 7.

Rule 112.

Every such appeal, if tried upon its merits, shall be heard upon the "allegations and proofs" adduced by both parties, or by the party appearing, and shall be determined "according to law, and the equity and right of the matter."

Rule 113.

Whenever a cause shall be removed from a justice of the peace by writ of *certiorari*, on the ground of the concurrent jurisdiction of this court, the subsequent proceedings in respect to the docketing and trial thereof shall be the same as provided in cases of appeals from justices of the peace.

See the following unnumbered Rules.

Ordered, That any Justice of the Peace may, in his discretion, within four days after judgment, open the same, and grant a new trial. (2 Min. G. T. p. 101, Oct. 25, 1872.)

Rule Relating to Process in Actions before Justices.

Adopted May 27, 1876. (2 Minutes General Term, 547.)

Ordered, That upon the issue of a summons to commence a suit by a justice of the peace, he shall, at the same time, issue a copy thereof, which shall be served upon the party or parties defendant; and for issuing the same, the justice shall be entitled to a fee of 10 cents for each copy so issued.

RECORDS AND PAPERS TO REMAIN IN CLERK'S OFFICE.

Rule 114.

No records or other papers of the court shall be taken from the Clerk's Office. (As amended January 9, 1877. 3 Min. G. T., p. 4.)

CHANGE OF PARTIES BY DEATH, MARRIAGE, OR CONTRACT.

(See Act of Maryland, 1785, chap. 80. sec. 7.)

Rule 115.

Any person who, while a cause of action at law or in equity is in suit, becomes entitled thereto or interested therein, as personal representative, husband, or transferee of the plaintiff, may, upon motion in writing, filed in the cause, showing when and how he became entitled or interested, be allowed to prosecute the suit against the defendant or his personal representative, instead of, or with the plaintiff, as the case may be.

This motion must be made within one year after the cause of action has accrued to the mover, otherwise the suit shall abate.

APPROVAL OF BONDS.

Rule 116.

In all cases where a bond or undertaking, with surety, is required by law, or rule of court, to be executed and filed in order to suspend the entry of judgment, or to act as a supersedeas, or to discharge any mechanics' lien, or any property held under any process of attachment, replevin, or any other judicial process; and such bond, with surety, is required by law or by rule of court, to be approved by the court, or by one of the justices or the clerk thereof, in all such cases no such approval shall be made, save upon affidavit of two days' notice of application for such approval to the opposite party in interest; and without such notice, no such approval shall be operative, and such notice shall contain the name and address of the proposed surety.

STIPULATIONS OF COUNSEL.

Rule 117.

All stipulations and agreements of counsel shall be invalid, unless the same be reduced to writing, and signed by the parties thereto, and delivered to the clerk to be filed and docketed in the cause to which they relate.

Rule 118.

The following forms may continue to be used as heretofore, for the purpose of avoiding prolixity and unnecessary verbiage in pleadings :

PLEADINGS.

DECLARATION.

Commencement and Conclusion.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, THE — DAY
OF —, 18—.

A. B., *Plaintiff*,
v.
C. D., *Defendant*. } At law, No. —.

The plaintiff sues the defendant for—(*here state the cause of action, and conclude as follows, or to the like effect:*)

And the plaintiff claims \$, with interest thereon from the day of , 18 , besides costs.

(*Or, if the action is for the recovery of specific goods, say—*) And the plaintiff claims a return of said goods, or their value, and \$ for their detention.

If the cause of action accrue to or against the parties in some special character, for example as EXECUTOR, OR ADMINISTRATOR, OR TRUSTEE, OR ASSIGNEE IN BANKRUPTCY, or otherwise, or as PARTNERS or surviving PARTNER, or as HUSBAND AND WIFE, it will promote brevity and clearness to state such character in the title of the cause, thus :

A. B., executor of —, deceased, *Plaintiff*,
v.
C. D., administrator of —, deceased, *Defendant*. } At law, No. —.

The plaintiff sues the defendant for (*state the cause of action, and conclude as above*).

ON SIMPLE CONTRACTS.

MONEY COUNTS COMBINED.

These may be combined in a single count, as pointed out by Williams, 2 Saunders, R., 121, c., n. 2, Stevens on Pl., 33—London, 1860—thus:

1. For money payable by the defendant to the plaintiff, for goods sold and delivered by the plaintiff to the defendant; and for work done and materials provided by the plaintiff for the defendant at his request, and for money lent by the plaintiff to the defendant; and for money paid by the plaintiff for the defendant at his request; and for money received by the defendant for the use of the plaintiff; and for money found to be due from the defendant to the plaintiff on accounts stated between them. And the plaintiff claims \$, with interest from the day of 18 , according to the particulars of demand hereto annexed.

And the plaintiff may recover the whole or any part of his claim on any one of the considerations stated. Chitty's Forms, 84.

MONEY COUNTS SEPARATE.

2. *For goods sold.*—For goods bargained and sold by the plaintiff to the defendant.

3. *For goods sold and delivered.*—For goods sold and delivered by the plaintiff to the defendant.

4. *For money on exchange of goods.*—For money agreed by the defendant to be paid by him to the plaintiff, together with certain goods of the defendant, by him delivered to the plaintiff in exchange for goods of the plaintiff, delivered by the plaintiff to the defendant.

5. *For stock sold and transferred.*—For \$ five-twenty United States stock, (*according to the fact,*) sold and transferred by the plaintiff to the defendant.

6. *For fixtures sold.*—For fixtures and effects bargained and sold and given up by the plaintiff to the defendant.

7. *For good-will of a business.*—For the good-will of a business of the plaintiff, sold and given up by the plaintiff to the defendant.

8. *For crops sold.*—For crops bargained and sold by the plaintiff to the defendant.

9. *For out-going tenant rights.*—For that the plaintiff relinquished and gave up to and in favor of the defendant, at his request, the benefit and advantage of work done, and the materials and things found and provided, and moneys expended by the plaintiff, in and about the farming, sowing, cultivating, and improving of certain lands and premises, while he held and occupied the same as tenant thereof.

10. *For an estate sold.*—For a messuage, lands, tenements and premises sold and conveyed by the plaintiff to the defendant.

11. *For the use of a house and land.*—For the defendant's use, by the plaintiff's permission, of messuages and lands of the plaintiff.

12. *For the use of unfurnished apartments.*—For the defendant's use, by the plaintiff's permission, of rooms and apartments of the plaintiff.

13. *For the use of furnished apartments.*—For the defendant's use, by the plaintiff's permission, of rooms and apartments of the plaintiff, with furniture and other goods of the plaintiff therein.

14. *For the use of furnished apartments and board, etc.*—For defendant's use, by the plaintiff's permission, of rooms, apartments and furniture of the plaintiff, and for board, lodging, food, attendance, and other necessities provided by the plaintiff for the defendant, at his request.

15. *For double rent.*—For double rent of a messuage and premises of the plaintiff, held by the defendant as tenant thereof to the plaintiff, for a quarter of a year's rent, which accrued due after the expiration of a notice given to the plaintiff by the defendant that the defendant would quit the said messuage and premises, and whereby the tenancy became and was duly determined.

16. *For the use of pasture land and eatage of grass.*—For the defendant's use of pasture land of the plaintiff, and the eatage of grass and herbage thereon, by the plaintiff's permission.

17. *For the use of a fishery.*—For the defendant's use, by the plaintiff's permission, of a fishery of the plaintiff.

18. *For wharfage and warehouse room.*—For the wharfage and warehouse room of goods deposited, stowed and kept by the plaintiff in and upon a wharf, warehouse and premises of the plaintiff for the defendant, at his request.

19. *For standing of carriages.*—For the standing of carriages, kept and taken care of by the plaintiff for the defendant, at his request.

20. *For horse-keep, stabling, etc.*—For horse-keep, stabling, care and attendance, provided and bestowed by the plaintiff in feeding and keeping of horses for the defendant, at his request.

21. *For agistment.*—For the agisting and feeding cattle by the plaintiff for the defendant, at his request.

22. *For the hire of goods.*—For the hire of goods by the plaintiff let to hire to the defendant.

23. *For freight.*—For freight for the conveyance by the plaintiff for the defendant, at his request, of goods in ships.

24. *For the carriage of goods by land.*—For the conveyance of goods by the plaintiff for the defendant, at his request.

25. *For passage-money.*—For the passage of the defendant [and other persons] on board a ship of the plaintiff [or, whereof the plaintiff was master,] at the defendant's request.

26. *For the tonnage of goods.*—For the tonnage of goods conveyed in boats, barges, and other vessels, by the plaintiff for the defendant, at his request.

27. *For lighterage of goods.*—For lighterage of goods conveyed by the plaintiff in lighters and other vessels, and landed out of the same, at the defendant's request.

28. *For demurrage.*—For the demurrage of a ship of the plaintiff kept on demurrage by the defendant.

29. *For primage or average.*—For primage and average for the conveyance of goods on board a ship of the plaintiff [or, whereof the plaintiff was master] at the defendant's request.

30. *For tolls on carriages passing over a bridge.*—For tolls payable by the defendant to the plaintiffs for the passage of loaded wagons and carts of the defendant over a bridge of the plaintiffs.

31. *For tolls on goods brought into a market and weighed.*—For tolls payable by the defendant to the plaintiff, for weighing at the plaintiff's beam [scales] goods brought by the defendant to a market for sale, and by the plaintiff weighed at the said beam.

32. *For tolls on passing through a turnpike and weighing.*—For tolls payable by the defendant to the plaintiff, as farmer and collector of the tolls payable at a turnpike gate, and at certain weighing machines, erected on a turnpike road, for the defendant's cattle, which traveled along the road and through the gate; and for the defendant's carriages, which had traveled along the road, and been weighed at the machines.

33. *For tolls on cattle sold in the market by farmer and proprietor.*—For tolls payable by the defendant to the plaintiff, as farmer and proprietor of a market, and of the tolls and duties arising therefrom, for the defendant's cattle brought into the market and sold therein, whilst the plaintiff was farmer and proprietor thereof.

34. *On a policy of insurance where there has been an adjustment.*—Upon and by virtue of a policy of insurance on a ship of the plaintiff on a certain voyage, underwritten by the defendant for \$, [here state the loss which, for example, may be thus:] the said ship having on the voyage been captured and taken as prize by certain enemies of the United States, and which was one of the perils insured against by the said policy, on any policy, and a loss of 100 per cent. on said policy having been adjusted and signed by the defendant.

For money payable by the defendant to the plaintiff for the ship John, wrecked and totally lost, in a voyage from Georgetown, District of Columbia, to the city of New York, by perils of the sea, against which the defendant assured the plaintiff by his policy dated the day of

18 , in the sum of \$, to be paid within 60 days after such notice of such loss, which notice has been given, but the defendant has not paid the same. And the plaintiff claims \$, by reason of the premises, besides costs.

35. *On an award on a submission not under seal.*—Upon and by virtue of an award, made by , by virtue of a certain submission to his award, made by the plaintiff and defendant, of and concerning [all matters in difference] then depending between them, and upon and by virtue of which reference the said awarded that the defendant should pay the plaintiff \$ at a day now past.

36. *On an umpirage.*—Upon and by virtue of an umpirage, made by , upon and by virtue of a submission by the plaintiff and defendant, [of all matters in difference,] then depending between them, to the award of and , as referees, and thereby empowering them, in case they should not agree in making such award, to appoint a third person to award the said matters in difference; and whereupon the said referees, not agreeing in making said award, by virtue of said power, appointed the said , as an umpire, to award of and concerning said matters of difference, who awarded that the defendant should pay the plaintiff \$ at a day now past.

37. *On an award under an order of court.*—Upon and by virtue of an award, made by , in pursuance of a reference to him, by an

order of the Supreme Court of the District of Columbia, made by consent of the plaintiff and the defendant, in an action therein pending, wherein the now plaintiff was plaintiff and the now defendant was defendant, and by which award the said referee awarded that the defendant should pay to the plaintiff \$ at a day now past; and also \$, being the costs of said action, which, by the said order of reference, were ordered to be at the discretion of said referee.

38. *For premiums of insurance.*—For premiums payable by the defendant to the plaintiff for insuring ships [*or goods, or moneys upon ships, or upon goods*] by the plaintiff for the defendant at his request.

39. *For work and materials.*—For work done and materials provided by the plaintiff for the defendant at his request.

40. *For a witness's expenses.*—For expenses necessarily incurred by the plaintiff in attending as a witness for the defendant, at his request, to give evidence upon the trial of an action at law No. —, then depending in the Supreme Court of the District of Columbia, wherein the defendant was plaintiff and one defendant.

41. *For money lent.*—For money lent by the plaintiff to the defendant.

42. *For money paid.*—For money paid by the plaintiff for the defendant, at his request.

43. *For money received.*—For money received by the defendant for the use of the plaintiff.

44. *For interest.*—For interest upon moneys due and owing from the defendant to the plaintiff, and for forbearance of interest, by the plaintiff at the defendant's request, of moneys due and owing by him to the plaintiff.

45. *On an account stated.*—For money found to be due from the defendant to the plaintiff on accounts stated between them.

ON BILLS AND NOTES.

Where money is payable by two or more persons, jointly or severally, as by joint obligors, covenantors, makers, drawers, or endorsers, one action may be sustained and judgment recovered against all or any of said parties by whom the money is payable, at the option of the plaintiff. (14 Sts., 405, § 20.)

46. *Holder of note against all the parties.*—That the defendant, , (the maker) on the day of , 18 , by his promissory note, now overdue, promised to pay to the defendant , (payee) \$, [two] months after date, and the said payee endorsed the said note to the defendant, , who endorsed it to the defendant, , who endorsed it to the plaintiff, and the said note was duly presented for pay-

ment, and was dishonored, whereof all of said endorsers each had notice, but the said defendants did not, nor did either of them, pay the same.

47. *Holder of bill against all the parties.*—That , on the day of , 18 , by his bill of exchange, now overdue, directed to the defendant, , [drawee] required him to pay to the defendant, , (payee) \$, [two] months after date, and the said (payee) endorsed the said bill to , who endorsed it to , who endorsed it to the plaintiff, and the said drawee accepted the said bill, which was duly presented for payment, and was dishonored, whereof the defendants had due notice, but did not pay the same.

48. *Payee against maker of note.*—That the defendant, on the day of , 18 , by his promissory note, now overdue, promised to pay to the plaintiff \$, [two] months after date, but did not pay the same.

49. *The like on note payable on demand.*—That the defendant, on the day of , 18 , by his promissory note, now overdue, promised to pay to the plaintiff \$, on demand, but did not pay the same.

50. *The like on a note payable at a banker's.*—That the defendant, on the day of , 18 , by his promissory note, now overdue, promised to pay to the plaintiff, at Messrs. Riggs & Co.'s, bankers, Washington, (as in the note), \$, [two] months after date, and the said note was duly presented for payment, and was dishonored, whereof the defendant had notice, but did not pay the same.

51. *The like on note payable by instalments, the whole to become due on one default.*—That the defendant, on the day of , 18 , by his promissory note, promised to pay to the plaintiff \$100, by monthly instalments of \$10, the first instalment to be paid on the day of , 18 , and in case of default in the payment of any or either of said instalments, the whole of the said sum of \$100, or as much thereof as should remain unpaid at the time of said default, to become payable; and default was made by defendant in the payment of the first instalment, and the whole amount of said note remains unpaid.

52. *The like where all the instalments are due by lapse of time.*—That the defendant, on the day of , 18 , by his promissory note, now wholly overdue, promised to pay to the plaintiff \$100, by monthly instalments of \$10, the first instalment to become payable on the day of , then next; but the defendant did not pay the first, or any of said instalments.

53. *The like on note payable by instalments, the whole to be payable on one default.*—That the defendant, on the day of , 18 , by his promissory note, promised to pay to the plaintiff \$100, by monthly instalments of \$10 each, the first instalment to be paid on the day of , then next, but has not paid the said first instalment.

54. *Endorsee against maker of note.*—That the defendant, on the day of , 18 , by his promissory note, now overdue, promised to pay to

, or order, \$, [two] months after date; and the said endorsed the same to the plaintiff; and the said note was duly presented for payment, and was dishonored, whereof the defendant had due notice, but did not pay the same.

55. *The like by an indorsee against payee, omitting averment of notice of dishonor, because maker had no effects.*—That , on the day of , 18 , by his promissory note, now overdue, promised to pay to the order of the defendant, \$, [two] months after date, and the defendant endorsed the same to the plaintiff; and the said note was duly presented for payment, and was dishonored; and, at the time of making the note, and from thence until and at the end of the day on which it became payable, the defendant had not, in the hands of the said , any effects; nor had, at any time, any reasonable ground to expect that the said could have any such effects, or that said note would be paid upon presentment of the same for payment; nor has the defendant sustained any damage by reason of his not having had notice of said presentment and dishonor of said note; and the defendant has not paid the same.

56. *Payee against drawer of check.*—That the defendant, on the day of , 18 , by his order for the payment of money, directed to Messrs. Riggs & Co. (*as in the check*), required them to pay to the plaintiff or bearer, \$, and the said order was duly presented for payment, and was dishonored, whereof the defendant had due notice, but did not pay the same.

57. *Bearer against drawer of check.*—That the defendant, on the day of , 18 , by his order for the payment of money, directed to Messrs. Riggs & Co., required them to pay to the bearer \$, and the plaintiff became the bearer thereof; and the said order was duly presented for payment, and was dishonored, whereof the defendant had due notice, but did not pay the same.

58. *Drawer against acceptor of bill.*—That the plaintiff, on the day of , 18 , by his bill of exchange, now overdue, directed to the defendant, required him to pay to the plaintiff \$, [two] months after date, and the defendant accepted the said bill, but did not pay the same.

59. *The like where drawer, not being payee, has taken up the bill.*—That the plaintiff, on the day of , 18 , by his bill of exchange, now overdue, directed to the defendant, required him to pay to , or order, \$, [two] months after date, and the defendant accepted the bill, but did not pay the same, and thereupon it was returned to the plaintiff, and remains unpaid.

60. *Indorsee against acceptor.*—That , on the day of , 18 , by his bill of exchange, now overdue, directed to the defendant, required him to pay to the said 's order, \$, [two] months after date, and the defendant accepted the same, and the said endorsed the same [to , who endorsed the same to ,

who endorsed the same] to the plaintiff; but the defendant did not pay the same. .

61. *Payee against drawer for default of acceptance.*—That the defendant, on the day of , 18 , by his bill of exchange, now overdue, directed to , required him to pay to the plaintiff, \$, [two] months after date; and the said bill was duly presented for acceptance, and was dishonored, of which the defendant had due notice, but did not pay the same.

62. *The like for default in payment.*—That the defendant, on the day of , 18 , by his bill of exchange, now overdue, directed to , required him to pay to the plaintiff, \$, [two] months after date, and the said bill was duly presented for payment, and was dishonored, of which the defendant had due notice, but did not pay the same.

63. *The like, averring that drawee had no effects of drawer, in order to dispense with notice of dishonor.*—That the defendant, on the day of , 18 , by his bill of exchange, now overdue, directed to , required him to pay to the plaintiff, \$, [two] months after date; and the said bill was duly presented for payment, and was dishonored; and at the time of making said bill, and from thence until, &c., [proceed, alleging the excuse for the want of notice, as in a form upon a note, No. 55.]

64. *Endorsee against drawer on non-payment.*—That the said defendant, on the day of , 18 , by his bill of exchange, now overdue, directed to , required him to pay to the defendant's order \$, [two] months after date; and the defendant endorsed the same [to , who endorsed the same] to the plaintiff; and the said bill was duly presented for payment and was dishonored, of which the defendant had due notice, but did not pay the same.

65. *Endorsee against endorser (not the drawer,) on non-payment.*—That , on the day of , 18 , by his bill of exchange, now overdue, directed to , required him to pay to the order of the said \$, [two] months after date; and the said endorsed the same [to , who endorsed the same] to the defendant, who endorsed the same to the plaintiff; and the said bill was duly presented for payment, and was dishonored, of which the defendant had due notice, but did not pay the same.

66. *Drawer against acceptor of a foreign bill.*—That the plaintiff, on the day of , 18 , in parts beyond the seas, to wit, [at Berlin, in the kingdom of Prussia,] by his bill of exchange, now overdue, directed to the defendant, required him to pay to the plaintiff \$, [two] months after date, and the defendant accepted the said bill, but did not pay the same; [and by reason of the premises, the plaintiff was put to and incurred expenses for presenting, noting, and protesting and re-exchange of said bill, and incidental to the dishonor of it.] *Note.*—Omit the averment between the [] if no expenses are claimed.

67. *Payee against acceptor of a foreign bill, supra protest.*—That , on the day of , 18 , in parts beyond the seas, to wit at in the empire [or kingdom] of , by his bill of exchange, now overdue, directed to , required him to pay to the plaintiff francs, months after date; and the said bill was duly presented for acceptance, and was dishonored by non-acceptance; whereupon the said bill was duly protested for non-acceptance thereof, of all which the defendant had due notice, and thereupon the defendant accepted the said bill under the said protest, and the said bill was duly presented to the said [the drawee] for payment when it became due, and he did not pay the same, whereupon it was duly protested for non-payment thereof; of all which the defendant had due notice, but did not pay the same. [Insert the averment at end of No. 66, if expenses are claimed.]

68. *Endorsee against acceptor of a foreign bill, payable at usances.*—That , on the day of , 18 , in parts beyond the seas, to wit, at , in the empire [or kingdom] of , by his bill of exchange, now overdue, directed to the defendant, required him to pay to , or order [thalers] at usances; and the said endorsed the said bill to the plaintiff, and the defendant accepted the said bill, but did not pay the same. [Insert averment at end of 66, if expenses are claimed.]

69. *Payee against drawer for default of acceptance.*—That the defendant, on the day of , 18 , in parts beyond the seas, to wit, at , in the empire [or kingdom] of , by his foreign bill of exchange, directed to , required him to pay to the plaintiff [francs] months after date; and the said bill was duly presented for acceptance, and was dishonored by non-acceptance, whereupon it was duly protested for non-acceptance thereof, of all which the defendant had due notice, but did not pay the said bill. [Aver as in 66, if expenses are claimed.]

70. *Endorsee against drawer for default of payment.*—That defendant, on the day of , 18 , [at Paris, in the republic of France,] by his foreign bill of exchange, now overdue, directed to , required him to pay to the defendant, or order, [francs] months after date, and the defendant endorsed the said bill to the plaintiff; and the said bill was duly presented for payment and was dishonored; whereupon it was duly protested for non-payment, of all which the defendant had due notice, but did not pay the same.

ON OTHER SIMPLE CONTRACTS.

71. *Breach of promise of marriage.*—That the plaintiff and defendant agreed to marry one another, and a reasonable time for such marriage has elapsed, and the plaintiff has always been ready and willing to marry the defendant, yet the defendant has neglected and refused to marry the plaintiff.

That the plaintiff and defendant agreed to marry one another on a day now elapsed, and the plaintiff was ready and willing to marry the defend-

ant on that day, yet the defendant has neglected and refused to marry the plaintiff.

72. *Warrant of a horse.*—That the defendant, by warranting a horse to be then sound and quiet to ride, sold said horse to the plaintiff, yet the said horse was not then sound and quiet to ride.

73. *On a guaranty.*—That the defendant, in consideration that the plaintiff would supply with goods on credit, promised the plaintiff to be answerable to him for the same; and the plaintiff did accordingly supply the said with goods to the price of \$ and upwards on credit, which credit has elapsed, yet neither the said nor the defendant has paid for said goods.

74. *For a breach of the terms of a parol demise of premises.*—That the defendant became the plaintiff's tenant of lands and premises, on the terms during his tenancy, to keep the same in tenantable repair, and use them in a tenantable and proper manner, and cultivate and manage the land according to good husbandry and the custom of the country, (according to the terms of the demise,) yet the defendant did not, during said tenancy, keep said premises in tenantable repair, nor did he cultivate and manage said land according to the course of good husbandry and the custom of the country, but suffered the premises to become and remain out of repair, and used the land in an untenantlike and improper manner.

ON SPECIALTIES.

75. *For not loading pursuant to charter-party.*—That the plaintiff and the defendant agreed, by charter-party that the plaintiff's ship, called the Ariel, should, with all convenient speed, sail to Georgetown, or so near thereto as she could safely get, and that the defendant should there load her with a full cargo of wheat, or other lawful merchandise, which she should carry to Wilmington, in the State of Delaware, and there deliver, on payment of freight \$ per ton, and that the defendant should be allowed 10 days for loading, and 10 days for discharge, and 10 days for demurrage, if required, at \$ per day; and the plaintiff did all things necessary on his part for him to have the agreed cargo loaded on board the said ship at Georgetown, and that the time for so doing has elapsed, yet the defendant made default in loading the agreed cargo.

76. *Upon a lease for rent.*—That the plaintiff let to the defendant a house, No. street north, between and streets, Washington city, for years, to hold from the day of , 18 , at \$ a year, payable quarterly, of which rent quarters are due and unpaid, to-wit: the rent due on the day of , and on the day of , 18 .

77. *Upon a covenant to repair.*—That the plaintiff [by deed] let to the defendant a house, No. street north between and streets, Washington city, to hold for years, from the day of , 18 , and the defendant by the said [deed covenanted] with the plaintiff, well and substantially to repair the said house during said term, (accord-

ing to the [covenant]) yet the said house was, during said term, out of good and substantial repair.

78. *On a deed generally.*—That, by deed, the defendant covenanted with the plaintiff to pay to the plaintiff \$ on , but he has not paid the same.

79. *On a mortgage deed for principal and interest.*—That the defendant, by deed, covenanted with the plaintiff to pay to him \$, on the day of , 18 , together with interest thereon, at the rate of six per cent. per annum, but did not pay the same—([or] *if the interest has been paid*) did not pay the said \$.

80. *Upon a bond, not stating the condition or a breach of it.*—That the defendant, by his bond, became bound to the plaintiff in the sum of \$, to be paid by the defendant to the plaintiff, but has not paid the same.

81. *Upon a bond, stating the condition and breach.*—That the defendant, by his bond, became bound to the plaintiff in the sum of \$, to be paid by the defendant to the plaintiff; which said bond was subject to a certain condition thereunder written, for the payment of the sum of \$ a year to the plaintiff by the defendant, during the said defendant's life, [*if for the life of another person, say, "during the life of , who is still living,"*] payable half-yearly, on the day of , and the day of in every year; and afterwards, on the day of , 18 , the sum of \$, for two of said half-yearly payments of said annuity, became and was due and payable to the plaintiff, and is still unpaid.

82. *On a judgment.*—That the plaintiff, on the day of , 18 , in the Superior Court of the county and city of New York, by the judgment of the said court, recovered against the defendant \$, together with \$, for costs of suit, whereof the defendant was convicted, and the plaintiff has not obtained any execution or satisfaction of the said judgment, and the same remains unsatisfied.

83. *For a penalty on a statute.*—That the defendant did tap or open the water-main laid down by the United States in New Jersey avenue, between B and C streets south, in the city of Washington, without having obtained authority so to do, as by the statute in that behalf is directed, whereby the defendant forfeited for said offence \$500, and has not paid the said \$500. 11 Statutes at Large, 436, § 5.

TORTS.

84. *Trespass on land.*—That the defendant broke and entered certain lands of the plaintiff, called Analosta, and depastured the same.

85. *Assault, battery, and false imprisonment.*—That the defendant assaulted and beat the plaintiff, gave him into the custody of a policeman, and caused him to be imprisoned in a police station.

86. *The like in a fuller form.*—That the defendant assaulted the plain-

tiff, and gave him into the custody of a policeman, and forced and compelled him to go to a police station, and caused him to be imprisoned there on a false charge, then made by the defendant, that the plaintiff had been guilty of a felony, and caused him to be kept in prison for a long time, until he was afterwards brought into custody before one of the Metropolitan Police magistrates; and the defendant again charged him with said offence, but the said magistrate dismissed the said charge, and caused him to be discharged out of custody.

87. *For seduction.*—For that the defendant debauched and carnally knew one _____, being the [daughter and] servant of the plaintiff, whereby she became pregnant with child, and was afterwards delivered of it; and thereby the plaintiff, for a long time, lost, and was deprived of the services of the said _____, and incurred expenses in and about the nursing and taking care of her, and in and about the delivery of the said child, and was otherwise injured.

88. *Wrongful conversion of goods.*—That the defendant converted to his own use, and wrongfully deprived the plaintiff of the use and possession of the plaintiff's goods; that is to say, the following household furniture, [or as the case may be].

89. *Wrongful detention of property, &c.*—That the defendant detains from the plaintiff his title deeds of the land called Fairfield, in the District of Columbia; that is to say, [describe the deeds].

90. *Damage done to goods by carrier.*—That the defendant being a common carrier of goods for hire, the plaintiff delivered to him, as such common carrier, and he as such received from him certain goods of the plaintiff, to wit, ten barrels of flour, to be carried by him for the plaintiff from Georgetown to New York, and there to be delivered by him to the plaintiff for reward to him on that behalf. Yet the defendant, while he so had the goods for the purpose aforesaid, did not take due and proper care of the same, but wholly neglected to do so, and so carelessly, negligently, and improperly carried and delivered the same, and took such bad care thereof that, by his negligence, carelessness, and improper conduct in this behalf, the said goods became and were damaged, and divers of the same were lost to the plaintiff.

91. *The like for not delivering goods.*—That the defendants being common carriers of goods for hire, the plaintiff delivered to them, as such common carriers, and they as such received from him certain goods of the plaintiff, to wit, ten barrels of flour, to be carried by them for the plaintiff from Georgetown to New York, and there to be delivered by them to the plaintiff for reward to them in that behalf; yet the defendants, although a reasonable time for that purpose has elapsed, have not delivered the said goods to the plaintiff at New York aforesaid, or elsewhere; and the same have, by reason of the defendant's negligence, carelessness, and improper conduct in that behalf, become lost to the plaintiff.

92. *Diverting water from a mill.*—That the plaintiff was possessed of a

mill, and by reason thereof was entitled to the flow of a stream for working the same, and the defendant, by cutting the bank of the said stream, diverted the water thereof away from the said mill. See 104.

93. *Infringement of a patent.*—That the plaintiff was the original and first inventor or discoverer of a new and useful improvement in grain and grass harvesters, and thereupon the United States of America, by letters-patent under the seal of the Patent Office of said United States, granted the plaintiff the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said improvement, within the said United States, for the term of 14 years, from the day of , 18 , and the defendant, during the said term, did infringe the said patent right.

94. *Defamation of character.*—That the defendant falsely and maliciously spoke and published of the plaintiff the words following, that is to say, "he is a thief," whereby the plaintiff lost his situation as messenger for the Commissioner of Patents, in the employ of said Commissioner.

95. *Libel.*—That the defendant falsely and maliciously printed and published of the plaintiff, in a newspaper called " , " the words following, that is to say, "he is a regular prover under bankruptcies," the defendant meaning thereby that the plaintiff had proved, and was in the habit of proving, fictitious debts against the estates of bankrupts, with the knowledge that such debts were fictitious.

96. *Malicious prosecution.*—That the defendant falsely and maliciously, and without any reasonable or probable cause, appeared before a justice of the peace in and for the District of Columbia, and made complaint before said justice, charging the plaintiff with having stolen [*as in the information laid before the magistrate;*] and, upon such complaint and charge, procured the said justice to grant, and the said justice did accordingly grant, his warrant for the apprehension of the plaintiff, returnable to the police court, to be dealt with according to law, for the said alleged offence; and the said defendant, under and by virtue of the said warrant, procured the plaintiff to be arrested, and to be imprisoned in a police office, and afterwards brought in custody before the said court (according to the fact,) who, having heard the said charge, dismissed the same, and discharged the plaintiff out of custody.

97. *Obstructing way.*—That the plaintiff was possessed of a tract of land, to which there was a way from [*the other terminus*] which the plaintiff had a right to use as a footway or carriageway, and the defendant [erected a fence across said way, and placed stones in the same,] so that the plaintiff could not use the same.

98. *Immoderate riding.*—That the defendant hired from the plaintiff a horse to ride from to , and thence back to , in a proper manner; and the defendant rode said horse so immoderately that he became sick and lame, and was greatly injured in value.

99. *Negligence of railroad company.*—That the defendant is a corporation owning a street railroad, called the _____ railroad ; that the plaintiff was a passenger on said railroad, and by reason of the insufficiency of an axle of the car in which he was riding, the plaintiff was hurt ; that the defendant did not use due care in regard to said axle, but the plaintiff did use due care.

100. *Obstructing a drain.*—That the plaintiff is lawfully possessed of a dwelling-house and lot in the city of Washington, and by reason thereof is entitled to have a certain drain or sewer, to drain off filth and water, leading from the cellar of said dwelling-house, [through and across (Fifth) street west, and thence beneath the land and lot of the defendant into a certain public sewer there,] and the defendant obstructed, choked, and wholly stopped up the said drain and sewer, in a part thereof in the said land and lot of the defendant, and still keeps and continues the same stopped up and obstructed, whereby the plaintiff has wholly lost the benefit and use of said drain or sewer.

101. *Erecting a privy near plaintiff's dwelling.*—That the plaintiff was and is seized in fee of a dwelling-house in the city of Washington, lately in the occupation of _____, as plaintiff's tenant thereof ; and the defendant erected and built a privy near the wall of said dwelling-house, and has continued the said privy from its erection hitherto, and during all the time permitted the same to be full of ordure, excrement, and filth, which has soaked and penetrated through the wall of the said dwelling-house, and thereby greatly mouldered, rotted, and spoiled the said wall ; and by reason thereof, and by the nasty, noisome, foul, and stinking stench, vapors, and smells arising from said privy, penetrating and ascending into the said dwelling-house, the same has been annoyed and rendered noisome ; and on account thereof, and for no other cause, the said tenant would not continue to hold said dwelling-house, as tenant, without a great abatement of the rent, and, notwithstanding said abatement, has abandoned the same ; and the said dwelling-house, by means thereof, has continued without a tenant for a long time.

The tenant may maintain this action if he does not obtain an abatement of rent. If the nuisance injures the reversion, as well as the possession, both landlord and tenant may maintain the action. 3 Pick., 348 ; 1 M. & S., 329, 334 ; 3 Lev., 209.

102. *For digging near the plaintiff's wall, so that it fell down.*—That the plaintiff was owner of a dwelling-house with the appurtenances in the city of Washington ; and the defendant dug away the ground near the foundation of said house, so that it tumbled down to the ground. 2 Saund., 397 ; 12 Mass. R., 220.

103. *For darkening ancient lights.*—That the plaintiff is the owner and possessor of a dwelling-house in the city of Georgetown, and of ten windows upon part of the south side, and of five windows in and upon part of the east side thereof, in and through which light into said dwelling

was let, and has been accustomed to be let, for more than twenty years, and ought yet to be let for lighting the same ; and the defendant a certain building so near said dwelling-house built and erected and continued, that thereby the said windows were stopped up and darkened, and the plaintiff has been deprived and lost the use of said windows.

104. *For diverting a water-course from a mill.*—That the plaintiff is seized in fee of a grist mill with the appurtenances, situate on Rock creek, in the District of Columbia, and for many years was used to have, and now ought to have, said creek running to said mill ; and the defendant diverted a great part of the water thereof from the plaintiff's said mill, so that said mill, which before could grind twenty bushels of corn every hour, by reason of said diversion can grind no more than five bushels an hour.

105. *Declaration in replevin.*—

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, THE — DAY
OF —, 18—.

A. B., Plaintiff, }
v. } At law, No. —.
C. D., Defendant. }

The plaintiff sues the defendant for unjustly detaining [wrongfully taking, and detaining] his said plaintiff's goods and chattels, to wit : [describe them] of the value of \$. And the plaintiff claims that the same be taken from the defendant and delivered to him ; or if they are eloigned, that he may have judgment of their said value, and all mesne profits and damages, which he estimates at \$, besides costs. (14 Sts., 404, § 13.) R. S. D. C., § 814.

106. *Declaration in ejectment.*—

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, THE — DAY
OF —, 18—.

A. B., Plaintiff, }
v. } At law, No. —.
C. D., Defendant. }

The plaintiff sues the defendant to recover the east 24 feet of lot No. 8, in square 488, in the city of Washington, fronting 25 feet on street, and running back the depth of the lot, in which he claims a fee simple ; [or an estate for life ;] [or, an estate for the life of . who is still living ;] [or an estate for a term of years, not yet expired ; and of which the plaintiff was lawfully possessed on the day of , 18 , when the defendant entered the same and unlawfully ejected the plaintiff therefrom, and unjustly detains the same from the plaintiff. And the plaintiff claims the possession of said part of said lot with the appurtenances and costs of suit.

PLEA.

Commencement and conclusion.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, THE — DAY
OF —, 18—.

A. B., *Plaintiff*,
v.
C. D., *Defendant*. } At law, No. —.

1. The defendant says, [*state first defence or plea.*]

2. And for a further plea, defendant says, [*state the second defence or plea.*]

3. And for a further plea, the defendant says, [*state the third defence or plea, and so on.*]

If the plea is to part only of the declaration, say—And for a further plea to —, [*stating to what it is pleaded,*] the defendant says.

Every second and subsequent defence or plea must be written in a separate paragraph, and numbered.

Commencement and Conclusion of plea in estoppel.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, THE — DAY
OF — 18—.

A. B., *Plaintiff*,
v.
C. D., *Defendant*. } At law, No. —.

The defendant says that the plaintiff ought not to be admitted to say [*state the matter in the declaration to which the plea is in estoppel,*] because he says that [*state the subject-matter of the estoppel,*] wherefore the defendant prays judgment if the plaintiff ought to be admitted against his own acknowledgment [deed] [the said record] [*or whatever the matter of the estoppel may be*] to say as in declaring he has alleged.

Commencement of plea by infant.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, THE — DAY
OF —, 18—.

A. B., *Plaintiff*.
v.
C. D., *Defendant*,
who defends by his guardian, E. F. } At law, No. —.

The defendant says that [*state the defence.*]

Pleas in actions ex contractu.

Denial of debt.—That he never was indebted as alleged. [*Applicable to the money counts.*]

Denial of contract.—That he did not promise as alleged, [*did not warrant as alleged,*] [*did not agree as alleged.*] (*Applicable to declarations on simple contracts, other than bills and notes.*)

Denial of plaintiff's or defendant's representative or fiduciary character.—

That the plaintiff [defendant] is not executor or [administrator.] [trustee,] [assignee,] as alleged.

Denial that defendant made the note, accepted the bill, &c., declared on.—That the defendant did not make said promissory note [accept the said bill] as alleged.

Denial of endorsement.—That the defendant [the said _____,] did not endorse the said promissory note [bill] as alleged.

Denial of notice of dishonor.—That the defendant did not have due notice [was not duly notified] of the dishonor of the said promissory note [bill] as alleged.

Denial of supply of goods in action on guaranty.—That the plaintiff did not supply the goods to the said _____, as alleged.

Denial of breach of promise to repair.—That the defendant did keep the said premises in repair, and did not use them in an untenantlike or improper manner, and he cultivated and managed the same according to good husbandry and the custom of the country. (*These traverses must deny the breach or breaches alleged in the declaration.*)

General denial of breach.—The defendant denies the said alleged breach [breaches] of the said promise, [agreement,] [covenant,] and says that he did not commit the same, or any part thereof.

Denial of deed.—That the alleged deed is not his deed.

No record of judgment.—That there is no record of the said judgment.

Judgment recovered.—That the plaintiff impleaded the defendant in an action for the same identical claim and cause of action in the declaration mentioned, to-wit, in the circuit court of Montgomery county, in the State of Maryland, and such proceedings were thereupon had in that action that the plaintiff afterwards, by the judgment of that court, recovered against the defendant \$ _____, for the same identical claim and cause of action in said declaration mentioned; which judgment remains in force.

Infancy of defendant.—That the defendant at the time of contracting the said debt, [accepting the said bill,] [making the said deed,] [accruing of the said cause of action,] as alleged, was an infant under the age of twenty-one years.

Coverture of defendant.—That the defendant, at the time of contracting the said debt, [accepting the said bill,] [making the said deed,] [accruing of the said cause of action,] as alleged, was the wife of _____.

Statute of limitations.—That the alleged cause of action did not accrue within [three] years before this suit.

Payment.—That before action he satisfied and discharged the plaintiff's claim by payment.

Satisfaction by delivery of goods.—That before action he satisfied and discharged the plaintiff's claim by delivering to him goods of the defendant, and by the plaintiff's accepting the same in such satisfaction and discharge.

Set-off.—That the plaintiff, at the commencement of the suit, was, and still is, indebted to the defendant in the sum of \$ for , as appears by the particulars of the said debt hereunto annexed; and he is willing that the same be set off against the plaintiff's demand.

Tender.—And for a plea to the said \$, parcel, &c., the defendant says that he was always ready and willing to pay the plaintiff the said sum of \$, parcel, &c., and that before action he tendered and offered to pay the same to him, but he refused to accept it, and the defendant now brings the said \$ into court ready to be paid to the plaintiff.

Payment into court.—That as to \$, parcel of the money claimed, [as to the count of the declaration,] the defendant brings into court \$, and says that the said sum is enough to satisfy the claim of the plaintiff in respect of the matter herein pleaded to.

Bankruptcy of defendant.—That the defendant became a bankrupt within the true intent and meaning of the statute in force concerning bankrupts, and that the causes of action accrued to the plaintiff before the defendant so became bankrupt.

Release before action.—That after the alleged claim accrued, and before this suit, the plaintiff, by deed, released the defendant therefrom.

The like after action.—That after the commencement of this action, the plaintiff, by deed, released the defendant from the said claim and causes of action, and his costs of suit herein.

After last continuance.—That after the last pleading in this action, and before this day, [he satisfied and discharged the plaintiff's claim by payment,] [the plaintiff, by deed, released the defendant from said claim and causes of action, and his costs of suit herein,] (*or whatever else may be the matter of defence.*)

Pleas in actions ex delicto.

Not guilty.—That he is not guilty, by the eighth section of the act, approved July 28th, 1866, entitled "An act to protect the revenue, and for other purposes," and the sections of the several acts enumerated in said eighth section of the said act of July 28, 1866.

Non-detinet.—That the defendant did not, nor does, detain the said goods [deeds] or any or either of them as alleged.

Traverse in Trespass, if the premises being plaintiff's.—That the said dwelling-house [land] was not the plaintiff's, as alleged.

Traverse of the goods being plaintiff's.—That the said goods [according to the terms used in declaration,] were not, nor were any or either of them, the plaintiff's, as alleged.

Freehold in defendant, or another.—That the said dwelling-house and land were the dwelling-house and land and soil and freehold [of the defendant,] [of ,] and that the defendant committed the alleged trespass as his servant, and by his command.]

Leave and license.—That he did what is complained of by the plaintiff's leave.

Lien in detinue.—That it was agreed between the plaintiff and the defendant, in consideration of the defendant's advancing to the plaintiff \$, that the defendant should have a lien on the said goods and deeds until repayment thereof with interest; that the defendant advanced to the plaintiff the \$, but the plaintiff has not repaid the same with interest; wherefore the defendant detained and still detains the said goods and deeds.

Truth of the alleged slander or libel.—That the said words complained of as spoken [written] and published by the defendant, are true in this, that (state the facts concisely showing the truth.)

Self-defence.—That the plaintiff first assaulted the defendant, who thereupon necessarily committed the alleged assault in his own defence.

Right of way.—That the defendant, at the time of the alleged trespass, was possessed of land, the occupiers whereof, for twenty years before this suit, enjoyed as of right and without interruption, a way on foot and with cattle and vehicles, from a public highway, over the said land of the plaintiff to the said land of the defendant, and from the said land of the defendant over the said land of the plaintiff to the said public highway, at all times of the year, for the more convenient occupation of the said land of the defendant, and that the alleged trespass was a use, by the defendants, of the said way.

REPLICATION.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, THE — DAY
OF —, 18—.

A. B., *Plaintiff*,
v.
C. D., *Defendant*. } At law, No. —.

The plaintiff joins issue upon the defendant's [first plea,] [so much of the first plea as alleges that, &c.,] (*specifying what or what part.*)

To plea containing new matter.—For example:

1. *To plea of release.*—That the alleged release is not the plaintiff's deed [was procured by defendant's fraud.]

2. *To plea of set-off.*—That the alleged set-off did not accrue within three years before this suit.

3. *To plea of self-defence.*—That the plaintiff was possessed of land whereupon the defendant was trespassing and doing damage, whereupon the plaintiff requested the defendant to leave the said land, which the defendant refused to do, and thereupon the plaintiff gently laid his hand on the defendant in order to remove him, doing no more than was necessary for that purpose, which is the alleged first assault by the plaintiff.

4. *To plea of right of way.*—That the occupiers of the said land did not

for twenty years before this suit enjoy as of right and without interruption the alleged way.

5. *To plea of no such record.*—That there is not any record of the said recovery [recognizance,] [writ,] in the said plea mentioned, remaining in the said court, [said Circuit Court of Montgomery county, in the State of Maryland,] as in the said plea alleged.

Replication confessing part of a plea of payment.—And as to the defendant's second plea, except so far as it is pleaded and relates to the sum of \$, parcel of the money claimed, the plaintiff confesses and admits that the defendant did satisfy and discharge by payment, as in the said plea alleged, the plaintiff's claim as to the said sum of \$, parcel, &c., and the plaintiff says that he will not further prosecute his suit against the defendant as to said sum of \$, parcel, &c.; and as to the residue of the defendant's second plea, the plaintiff takes issue thereon.

Replication admitting part of a plea of set-off.—The plaintiff takes issue on the defendant's second plea, except so far as relates to the sum of \$, parcel of the amount in which the plaintiff is therein alleged to be indebted to the defendant; and as to that plea, so far as it relates to those sums, parcel, &c., the plaintiff admits that he was and is indebted to the defendant in the sum of \$, parcel of the money in which he is, in that plea, alleged to be indebted, and the plaintiff is willing to set off the said sum of \$, parcel of the money claimed by him, against the said sum of \$, in which he was and is so indebted to defendant, and he does set off the same accordingly, and says that he will not further prosecute his claim or suit against the defendant for or in respect of the same.

NEW ASSIGNMENT.

To plea of right of way.—The plaintiff, as to the and pleas, says that he sues not for the trespass therein admitted, but for trespasses committed by the defendant in excess of the alleged rights, and also in other parts of the said land, and on other occasions, and for other purposes than those referred to in said pleas.

(If the plaintiff replies and new assigns, the new assignment may be as follows:)

And the plaintiff, as to the and pleas, further says that he sues, not only for the trespass in those pleas admitted, but also for , &c.

(If the plaintiff replies and new assigns as to some of the pleas, and new assigns only to the other, the form may be as follows:)

And the plaintiff, as to the and pleas, further says that he sues, not for the trespass in the pleas (the pleas not replied to) admitted, but for the trespasses in the pleas (the pleas replied to) admitted, and also for , &c.

(Subscribe the same notice to plead as in case of declaration.)

Confession and plea to new assignment.—And the defendant, as to the said trespasses above newly assigned, freely here in court confesses the said action of the plaintiff, and that the defendant is guilty thereof, and that the plaintiff has sustained damages in respect thereof to a small amount, to wit, \$, which he is willing to pay, and which he brings into court ready to be paid to the plaintiff, and he says that the said sum is enough to satisfy the plaintiff's cause of action so newly assigned. And the defendant relinquishes so much of his said several pleas as relates to the said newly assigned cause of action.

REJOINDER.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, THE — DAY
OF —, 18—.

A. B., *Plaintiff*,
v.
C. D., *Defendant*. } At law, No. —.

The defendant joins issue upon the plaintiff's replication to the defendant's [pleas] [first plea,] [second plea,] (*as the case may be.*)

DEMURRER.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, THE — DAY
OF —, 18—.

A. B., *Plaintiff*,
v.
C. D., *Defendant*. } At law, No. —.

The defendant [plaintiff] says that the declaration [plea] is bad in substance.

(*Insert in the margin, or below the demurrer, the following :*) NOTE.—One of the matters of law intended to be argued is, that, &c. (*State the ground of the demurrer concisely.*)

JOINDER IN DEMURRER.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, THE — DAY
OF —, 18—.

A. B., *Plaintiff*,
v.
C. D., *Defendant*. } At law, No. —.

The plaintiff [defendant] says that the declaration [plea] is good in substance.

The pleader may supplement the foregoing brief forms of declarations by referring to BULLEN AND LEAKE'S PRECEDENTS OF PLEADING IN PERSONAL ACTIONS, from which the following list of COUNTS IN ACTIONS ON CONTRACTS and in ACTIONS FOR WRONGS is extracted, with references to the pages of the book:

COUNTS IN ACTIONS ON CONTRACTS.

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Account stated.....	52	Foreign companies (see company).	
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Attorney.....	82	Infant (see infancy).....	23
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Conditions precedent.....	147	Recognizance of bail (see bail).	
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Covenant (see landlord and tenant, mortgage sale of land).....	149	Reward.....	237
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Demurrage (see carriers of goods by water).....	129	Seaman.....	255
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Exchange.....	151	Shipping (see carriers by water, charter-parties, seamen).	
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		Work.....	270

COUNTS IN ACTIONS FOR WRONGS.

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Attorney.....	275	Master and servant.....	359
Bailments.....	275	Medical men.....	364
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ADVERTISING.

Rule 119.

(1.) Advertising done under the authority of the court shall be paid for, at rates per square of four lines of agate type, not exceeding the following :

	1t	2t	3t	4t	5t	6t	2w	3w	1m	2m	3m	9m	12m
1 square daily.....	75	1.00	1.25	1.50	1.75	2.00	3.00	4.00	5.00	9.00	12.00	22.50	37.50
1 square every other day.....	75	1.25	1.50	2.00	2.50	2.75	2.75	3.50	4.00	6.50	7.50	15.05	27.50
1 square twice a week.....	75	1.25	.....	.....	.....	.....	2.25	3.00	3.50	5.50	7.00	12.50	22.50

1 square once a week, 75 cents each insertion.

(2.) Every trustee or other person authorized or directed by the court to advertise property for sale shall append to the advertisement his name and a reference to his place of business or residence; but he shall not enhance the cost of the advertisement by publishing the name or card of any person employed to cry the sale.

(3.) At every such sale the trustee or other officer or agent of the court making the sale shall be present, and shall himself in person receive the deposit required in such cases; and he shall in no case entrust the payment of the advertising and other expenses to the person employed to cry the sale.

(4.) In his report of the sale to the court the trustee or other person making the sale shall state, under oath, whether he has complied with the provisions of this rule.

Rule 120.

The compensation of the person employed to cry any sale of real or leasehold estate, hereafter made by the authority or direction of the court, shall be one-eighth of one per cent. of the amount for which the property shall sell; provided that such compensation shall not be less in any case than ten dollars. For an ineffectual effort to sell such crier may be paid not exceeding five dollars. Such compensation shall be paid by the trustee and deducted from his commissions.

ASSIGNMENT OF JUSTICES.

JANUARY 12th, 1867.

Ordered, that, hereafter, in each year, on or before the first Monday of February, the Chief Justice of this Court shall make an assignment of each of the Justices of this Court, to hold the various Courts for the then coming year:

And no Justice of this Court shall transact or interfere with

the business of either of such Courts, to which he is not assigned, except on a written request of the Justice assigned to hold such Court :

And such assignment when made shall be entered upon the minutes of the Court.

1 Minutes, General Term, 160-161.

RULES

OF THE

SUPREME COURT OF THE DISTRICT OF COLUMBIA,

IN

APPEALS FROM THE DECISIONS OF THE COMMISSIONER OF PATENTS,

Adopted November 30, 1874. 1 Minutes, General Term, 493.

Rule 1.

The appellant's petition shall be addressed to the court, and shall be substantially as follows :

*“ To the Supreme Court of the District of Columbia, in banc,
the — day of —, 18—.*

“ The petition of — —, a citizen of — —, in the [State, Territory, District,] of — —, respectfully shows as follows :

“ *a.* About the — day of —, 18—, I invented [describe the subject of the desired patent, in the identical words of the application to the Patent Office.]

“ *b.* On the — day of —, 18—, in the manner prescribed by law, I presented my application to the Patent Office, praying that a patent be issued to me for the said invention.

“ *c.* Such proceedings were had in said office, upon said ap-

plication, that, on the —— day of ——, 18—, it was rejected by the Commissioner of Patents.

“*d.* I thereupon appealed to this court, and gave notice thereof to the Commissioner, and filed in his office the following reasons for said appeal :

“*e.* The Commissioner of Patents has furnished me a complete copy of all the proceedings in his office, upon my said application, deemed material to the issue, which copy has been filed herewith, and is to be taken as a part hereof.

“*f.* And thereupon I pray that the court do revise and reverse said decision, to the end that justice may be done in the premises.

“ —— ———.”

Rule 2.

This petition shall be filed in the Clerk's Office of this court ; and as soon as the petitioner has made the deposit required by law at the commencement of suits in this court, or said deposit has been dispensed with, the clerk shall enter the case in a docket to be provided by him for the purpose, and in which a brief of said filing and of all subsequent proceedings in the case shall be entered, as and when they successively occur, down to, and including the final decision.

Rule 3.

The clerk shall provide a minute-book of his office, in which he shall record every order, rule, judgment, or decree of the court in each case, in the order of time in which said proceedings occur ; and of this book there shall be two alphabetical indexes, one showing the name of the party applying for the patent, and the other designating the invention by its subject-matter or name.

Rule 4.

The cases in the docket of causes shall be successively numbered from No. 1 onward, and each case shall also be designated by the number assigned to it on the records of the Patent Office.

Rule 5.

This docket shall be called for the trial of the cases thereon on the first day of each session of this court in General Term, provided the petition has been filed ten days before the commencement of the term. Appeals filed within ten days of the commencement of the term, or during the term, may, by leave of the court, be set down for hearing at any time during the term, not less than ten days subsequent to the filing.

Rule 6.

The opinions of the court, when written, shall be kept by the clerk in the order of their delivery, in a temporary book-file, indexed; and when as many have been delivered as will make a volume of convenient size, he shall cause them to be bound.

Rule 7.

The clerk shall furnish to any applicant a copy of any paper in any of said appeals on payment of the lawful fees.

Rule 8.

Hearings of said appeals shall be subject to the rules of the court provided for other causes therein.

Rule 9.

When the testimony of the Commissioner, or of any examiner, touching the principles of the invention in question shall be deemed necessary, it shall be taken orally in open court, unless otherwise ordered by the court. And, in such case, the court may order it to be reduced to writing, and filed or entered on its minutes, if it think proper.

Rule 10.

The final judgment or order of the court shall not recite any of the facts made to appear in the case, but shall be to the following effect :

“This appeal having been heard upon the record from the Patent Office, [and upon the testimony of the Commissioner of Patents,] [of one of the examiners,] [touching the principles of

the invention,] and having been argued by [counsel for] the petitioner [for] and the Commissioner:

“It is thereupon ordered and adjudged that the [petition be dismissed] [Commissioner do issue to the petitioner a patent,] [as prayed,] [granting the petitioner (so and so.)]

“And that the clerk of this court transmit to the Commissioner of Patents a copy of this decree, duly authenticated.”

RULES OF PRACTICE IN EQUITY
OF
THE SUPREME COURT
OF THE
DISTRICT OF COLUMBIA.

Rule 1.

Court to be deemed always open for preparation of causes.

The court of equity shall be deemed always open for the purpose of filing bills, answers, and other pleadings, for issuing and returning mesne and final process and commissions, and for making and directing all interlocutory motions, orders, rules, and other proceedings, preparatory to the hearing of all causes upon their merits.

Rule 2.

Attendance in clerk's office.

The clerk's office shall be open, and the clerk shall be in attendance therein, on the first Tuesday of every month, for the purpose of receiving, entering, entertaining, and disposing of all motions, rules, orders, and other proceedings, which are grantable of course, and applied for, or had by the parties, or their solicitors, in all causes pending in equity, in pursuance of the rules hereby prescribed.

Rule 3.

Order book.

Any justice of the court, as well in vacation as in term, may, at chambers, make and direct all such interlocutory orders,

rules and other proceedings, preparatory to the hearing of all causes upon their merits, in the same manner and with the same effect, as the court could make and direct the same in term, reasonable notice of the application therefor being first given to the adverse party, or his solicitor, to appear and show cause to the contrary at the next rule day thereafter, unless some other time is assigned by the justice for the hearing.

All motions, rules, orders, and other proceedings made and directed at chambers, or on rule days, at the clerk's office, whether special or of course, shall be entered by the clerk in an order book, to be kept at the clerk's office, on the day when they are made and directed; which book shall be open at all office hours to the free inspection of the parties in any suit in equity, and their solicitors.

Rule 4.

Motions grantable of course.

All motions and applications in the clerk's office for the issuing of mesne process and final process to enforce and execute decrees, for filing bills, answers, pleas, demurrers, and other pleadings;

For making amendments to bills and answers;

For taking bills *pro confesso*;

For filing exceptions, and for other proceedings in the clerk's office, which do not, by the rules hereinafter prescribed, require any allowance or order of the court, or of any judge thereof;

Shall be deemed motions and applications, grantable of course by the clerk of the court. But the same may be suspended, or altered, or rescinded by any judge of the court, upon special cause shown.

Rule 5.

Notice of motion, when requisite.

All motions for rules or orders or other proceedings, which are not grantable of course, or without notice, shall, unless a different day be assigned by a justice of this court, be noticed for the first day of the special term, and a copy of the affidavits or papers upon which said motion is founded shall, together with the notice of motion, be served on the oppo-

site party, if he has appeared, or his solicitor, at least two days before the hearing of said motion, unless the grounds of said motion are matter of record; in which case it shall only be necessary to refer to such parts of the record as are specified in the notice of motion.

PROCESS.

Rule 6.

Leading process.

The process of subpoena shall constitute the proper process in all suits in equity in the first instance, to require the defendant to appear and answer the exigency of the bill.

Rule 7.

Subpœna not issued till bill filed.

No process of subpoena shall issue from the clerk's office in any suit in equity until the bill is filed in the cause.

Rule 8.

Where subpoena to be issued of course, and return.

Whenever a bill is filed the clerk shall issue the process of subpoena thereon, as of course, upon the application of the plaintiff, which shall be returnable into the clerk's office the next rule day, occurring after twenty days from the time of the issuing thereof. At the bottom of the subpoena shall be placed a memorandum, *that the defendant is to enter his appearance in the suit in the clerk's office on or before the day at which the writ is returnable; otherwise the bill may be taken pro confesso.* Where there are more than one defendant a writ of subpoena may, at the election of the plaintiff, be sued out separately for each defendant, except in the case of husband and wife, defendants, or a joint subpoena against all the defendants.

Rule 9.

Service.

The service of all subpoenas shall be by a delivery of a copy thereof by the officer serving the same to the defendant personally, or, in case of husband and wife, to the husband

personally, or by leaving a copy thereof at the dwelling-house or usual place of abode of each defendant, with some suitable person, who is a member or resident in the family.

Rule 10.

Renewal.

Whenever any subpoena shall be returned not executed as to any defendant, the plaintiff shall be entitled to another subpoena, *toties quoties*, against such defendant, if he shall require it, until due service is made.

Rule 11.

Marshal to serve.

The service of all process, mesne and final, shall be by the marshal of the district, or his deputy, or by some other person specially appointed by the court for that purpose, and not otherwise. In the latter case the person serving the process shall make affidavit thereof.

Rule 12.

Docketing suit.

As soon as the bill is filed the clerk shall enter the suit upon his docket as pending in the court, and shall state the time of the entry.

DEFENDANT'S APPEARANCE AND DEFENCE.

Rule 13.

Time of appearance.

A defendant served with subpoena to answer twenty days before the first Tuesday of any month must appear by the rule day first occurring twenty days after the service thereof.

Rule 14.

Entry of appearance.

The appearance of the defendant, either personally or by his solicitor, shall be entered in the order book on the day thereof by the clerk.

Rule 15.*Default in appearing.*

In default of such appearance, the plaintiff may, at his election, enter an order (as of course) in the order book, that the bill be taken *pro confesso*, and thereupon the cause shall be proceeded in *ex parte*, and the matter of the bill may be decreed by the court at the next ensuing term thereof accordingly, if the same can be done without an answer and is proper to be decreed; or the plaintiff, if he requires any discovery or answer to enable him to obtain a proper decree, shall be entitled to process of attachment against the defendant, to compel an answer; and the defendant shall not, when arrested upon such process, be discharged therefrom unless upon filing his answer, or otherwise complying with such order as the court or judge thereof may direct, as to pleading to or fully answering the bill, within a period to be fixed by the court or judge, and undertaking to speed the cause.

Rule 16.*Decree on—Setting aside.*

When the bill is taken *pro confesso*, the court may proceed to a decree at the next ensuing term thereof, and such decree rendered shall be deemed absolute unless the court shall, at the same term, set aside the same, or enlarge the time for filing the answer, upon cause shown upon motion and affidavit of the defendant. And no such motion shall be granted, unless upon the payment of the costs of the plaintiff in the suit up to that time, or such part thereof as the court shall deem reasonable, and unless the defendant shall undertake to file his answer within such time as the court shall direct, and submit to such other terms as the court shall direct for the purpose of speeding the cause.

FRAME OF BILL.**Rule 17.***Introduction.*

Every bill shall be divided into paragraphs, successively numbered, and shall contain the names and places of abode of

all the parties, plaintiffs and defendants, by and against whom the bill is brought. The form of the introductory part thereof shall, in substance, be as follows :

Bill in equity.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, THE
 — DAY OF —, 18—.

A. B., *Plaintiff*, }
 v. } No. —.
 C. D., *Defendant*. }

*To the Supreme Court of the District of Columbia, holding an
 Equity Court for said District.*

The plaintiff states as follows :

1. He is a citizen of — —, [in the State of New York,] and brings this suit [in his own right] or [as assignee in bankruptcy of the late firm of — — and — —, merchants in the city of New York], [stating the character in which he sues].

2. The defendant is a citizen of the District of Columbia, and is sued in this action [as executor of — —, deceased, late of said District].

3. That, etc.

Rule 18.

Parts that may be omitted.

The plaintiff, in his bill, shall omit the part which is usually called the common *confederacy clause* of the bill, averring a confederacy between the defendants to injure or defraud the plaintiff; also what is commonly called the *charging part* of the bill, setting forth the matters or excuses which the defendant is supposed to intend to set up by way of defence to the bill; also what is commonly called the *jurisdiction clause* of the bill, that the acts complained of are contrary to equity, and that the defendant is without any remedy at law; and the bill shall not be demurrable therefor.

Rule 19.

Reason of omitting parties to be averred.

If any persons, other than those named as defendants in the

bill, shall appear to be necessary or proper parties thereto, the bill shall aver the reason why they are not made parties by showing them to be without the jurisdiction of the court, or that they cannot be joined without ousting the jurisdiction of the court as to the other parties. And as to persons who are without the jurisdiction and may properly be made parties, the bill may pray that process may issue to make them parties to the bill, if they should come within the jurisdiction.

Rule 20.

Bill to be signed by counsel.

Every bill shall contain the signature of counsel annexed to it, which shall be considered as an affirmation on his part that, upon the instructions given to him and the case laid before him, there is good ground for the suit in the manner in which it is framed.

Rule 21.

Matter of bill to be brief, relevant, pertinent.

Every bill shall be expressed in as brief and succinct terms as it reasonably can be, and shall contain no unnecessary recitals of deeds, documents, contracts, or other instruments *in hæc verba*, or any impertinent, scandalous or irrelevant matter. If it does, a motion may be made to the court to expunge such portions thereof as are deemed impertinent or scandalous; and if so found by the court, it shall be expunged at the expense of the plaintiff, and he shall pay to the defendant all his costs in the suit up to that time, unless the court otherwise order. If the court find that the matter of the bill is not scandalous or impertinent, the plaintiff shall be entitled to the costs of the motion.

Rule 22.

Prayer for process.

The prayer for process of subpoena in the bill shall contain the names of all the defendants named in the introductory part of the bill, and if any of them are known to be infants under age, or otherwise under guardianship, shall state the fact, so that the court may take order thereon as justice may require, upon the return of the process. If an injunction or a writ of

ne exeat or any other special order pending the suit, is asked for in the prayer for relief, that shall be sufficient without repeating the same in the prayer for process.

Rule 23.

Prayer for relief.

The prayer of the bill shall ask the special relief to which the plaintiff supposes himself entitled, and also shall contain a prayer for general relief; and if an injunction or a writ of *ne exeat*, or any other special order pending the suit, is required, it shall also be specially asked for.

AMENDMENT OF BILLS.

Rule 24.

Before copy—after copy.

The plaintiff may, as a matter of course, and without payment of costs, amend his bill in any matters whatsoever, before any copy has been taken out of the clerk's office, and in any small matters afterwards, such as filling blanks, correcting errors of dates, misnomer of parties, misdescription of premises, clerical errors, and generally in matters of form. But if he amend in a material point after a copy has been so taken, (as he may do, of course,) before any answer or plea, or demurrer to the bill, he shall pay to the defendant, the costs occasioned thereby, and shall, without delay, furnish him a fair copy thereof, free of expense, with suitable references to the places where the same are to be inserted. And if the amendments are numerous he shall furnish in like manner, to the defendant, a copy of the whole bill as amended; and if there be more than one defendant a copy shall be furnished to each defendant affected thereby.

Rule 25.

After answer.

After an answer, or plea, or demurrer is put in, and before replication, the plaintiff may, upon motion or petition without notice, obtain an order from any justice of the court, to amend his bill on or before the next succeeding rule day, upon pay-

ment of costs or without payment of costs, as the court or a judge thereof may in his discretion direct.

After replication.

But after replication filed the plaintiff shall not withdraw it and amend his bill, except upon a special order of a justice of the court, upon motion or petition, after due notice to the other party; and upon proof by affidavit that the same is not made for the purpose of vexation or delay, or that the matter of the proposed amendment is material, and could not with reasonable diligence have been sooner introduced into the bill, and upon the plaintiff submitting to such other terms as may be imposed by the judge for speeding the cause.

Rule 26.

Leave to amend when deemed abandoned.

If the plaintiff, so obtaining any order to amend his bill after answer, or plea, or demurrer, or after replication, shall not file his amendments or amended bill, as the case may require, in the clerk's office, on or before the next succeeding rule-day, he shall be considered to have abandoned the same, and the cause shall proceed as if no application for any amendment had been made.

DEMURRERS AND PLEAS.

Rule 27.

Terms of filing.

No demurrer or plea shall be allowed to be filed to any bill unless upon a certificate of counsel that in his opinion it is well founded in point of law, and supported by the affidavit of the defendant that it is not interposed for delay; and if a plea, that it is true in point of fact.

Rule 28.

To whole or part of bill.

The defendant may, at any time before the bill is taken for confessed, or afterwards with the leave of the court, demur or plead to the whole bill, or to part of it, and he may demur to

part, plead to part, and answer as to the residue ; but in every case in which the bill specially charges fraud or combination, a plea to such part must be accompanied with an answer fortifying the plea, and explicitly denying the fraud and combination, and the facts on which the charge is founded.

Rule 29.

Argument of, or issue on.

The plaintiff may set down the demurrer or plea to be argued, or he may take issue on the plea. If, upon an issue, the facts stated in the plea be determined for the defendant, they shall avail him as far as in law and equity they ought to avail him.

Rule 30.

Cost of overruling

If, upon the hearing, any demurrer or plea is overruled, the plaintiff shall be entitled to his costs in the cause up to that period, unless the court shall be satisfied that the defendant had good ground in point of law or fact to interpose the same, and it was not interposed vexatiously or for delay. And upon the overruling of any plea or demurrer, the defendant shall be assigned to answer the bill or so much thereof as is covered by the plea or demurrer, the next succeeding rule day or at such other period as, consistently with justice and the rights of the defendant, the same can, in the judgment of the court, be reasonably done ; in default whereof the bill shall be taken against him *pro confesso*, and the matter thereof proceeded in and decreed accordingly.

Rule 31.

Cost of allowing.

If, upon the hearing, any demurrer or plea shall be allowed, the defendant shall be entitled to his costs. But the court may, in its discretion, upon motion of the plaintiff, allow him to amend his bill upon such terms as it shall deem reasonable.

Rule 32.

Admitted to be true and sufficient, when.

If the plaintiff shall not reply to any plea, or set down any

plea or demurrer for argument, on the next rule day, provided the same is filed five days before the commencement of the term, he shall be deemed to admit the truth thereof.

Rule 33.

Defence by answer instead of plea.

The rule, that if a defendant submits to answer he shall answer fully to all the matters of the bill, shall no longer apply in cases where he might by plea protect himself from such answer and discovery. And the defendant may in all cases by answer insist upon all matters of defence (not being of a merely dilatory character) in bar of or to the merits of the bill, of which he may avail himself by a plea in bar; and in such answer he shall not be compellable to answer any other matters than he would be compellable to answer and discover upon filing a plea in bar, and answer in support of such plea, touching the matters set forth in the bill to avoid or repel the bar or defence. Thus, for example, a *bona fide* purchaser for a valuable consideration, without notice, may set up that defence by way of answer instead of plea, and shall be entitled to the same protection, and shall not be compellable to make any further answer or discovery of his title than he would be in any answer in support of such plea.

Rule 34.

New or supplemental answer.

In every case where an amendment shall be made by plaintiff after answer filed, the defendant shall put in a new or supplemental answer, within ten days after notice of the filing of the amended bill, unless the time is enlarged or otherwise ordered by a justice of the court; and upon his default the like proceedings may be had as in cases of an omission to put in an answer.

PARTIES TO THE SUIT.

Rule 35.

Proceeding without.

In all cases where it shall appear to the court that persons who might otherwise be deemed necessary or proper parties to

the suit cannot be made parties by reason of their being out of the jurisdiction of the court, or incapable otherwise of being made parties, the court may in its discretion proceed in the cause without making such persons parties; and in such cases the decree shall be without prejudice to the rights of the absent parties.

Rule 36.

Very numerous, dispensed with.

Where the parties on either side are very numerous, and cannot, without manifest inconvenience and oppressive delays in the suit, be all brought before it, the court in its discretion may dispense with making all of them parties, and may proceed in the suit, having sufficient parties before it to represent all the adverse interests of the plaintiffs and the defendants in the suit properly before it. But in such cases the decree shall be without prejudice to the rights and claims of all the absent parties.

Rule 37.

Beneficiaries dispensed with.

In all suits concerning real estate which is vested in trustees by devise, and such trustees are competent to sell and give discharges for the proceeds of the sale, and for the rents and profits of the estate, such trustees shall represent the persons beneficially interested in the estate or the proceeds, or the rents and profits, in the same manner, and to the same extent, as the executors or administrators in suits concerning personal estate represent the persons beneficially interested in such personal estate; and in such cases it shall not be necessary to make the persons beneficially interested in such real estate, or rents and profits, parties to the suit; but the court may, upon consideration of the matter on the hearing, if it shall think fit, order such persons to be made parties.

Rule 38.

Want of, suggested in answer.

Where the defendant shall, by his answer, suggest that the bill is defective for want of parties, the plaintiff may, within fourteen days after answer filed, set down the cause for argu-

ment upon that objection only; and the purpose for which the same is so set down shall be notified by an entry, to be made in the clerk's order book, in the form or to the effect following: "Set down, upon the defendant's objection for want of parties." And where the plaintiff shall not so set down his cause, but shall proceed therewith to a hearing, notwithstanding an objection for want of parties taken by the answer, he shall not, at the hearing of the cause, if the defendant's objection shall then be allowed, be entitled as of course to an order for liberty to amend his bill by adding parties; but the court, if it thinks fit, may dismiss the bill.

Rule 39.

Omitted, saving for in decree.

If a defendant at the hearing of a cause, object that a suit is defective for want of parties, not having by plea or answer taken the objection, and therein specified by name or description the parties to whom the objection applies, the court may make a decree, saving the rights of the absent parties.

Rule 40.

Nominal, when to answer—when not.

Where no account, payment, conveyance, or other direct relief is sought against a party to a suit, not being an infant, the party upon service of the subpoena upon him, need not appear and answer the bill, unless the plaintiff specially requires him so to do by the prayer of his bill; but he may appear and answer at his option; and if he does not appear and answer he shall be bound by all the proceedings in the cause. If the plaintiff shall require him to appear and answer, he shall be entitled to the costs of all the proceedings against him, unless the court shall otherwise direct.

INJUNCTION.

Rule 41.

To suspend business of bank, &c.

No injunction nor restraining order to suspend the ordinary business of any bank or moneyed corporation, or to compel a

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defendant to refrain from doing any other act, where the injunction will necessarily produce great and irreparable injury to the defendant if the claim of the complainant be not sustained, shall be allowed, except upon a direct application to the justice holding *the special term of the court*.

To stay proceedings at law.

Except when an injunction is to stay proceedings in an ordinary suit at law, or is against a judgment debtor, who is made a defendant to a creditor's bill, no injunction or restraining order shall be issued but upon the precedent condition that the complainant execute and file in the cause, with surety or sureties, if deemed necessary by the justice, and to be approved by him, an undertaking *to make good to the defendant all damages by him suffered or sustained by reason of wrongfully and inequitably suing out the injunction, and stipulating that the damages may be ascertained in such manner as the justice shall direct; and that, on dissolving the injunction, he may give judgment thereon against the principal and sureties for said damages in the decree itself dissolving the injunction.*

Rule 42.

Notice of application for.

The justice to whom an application for an injunction is made, may refuse to allow it *ex parte*, and instead thereof may appoint a day for hearing the application, and require the defendant, or if there be several defendants, such of them as he thinks proper, to be notified of the hearing for a reasonable time previously, subject to the provision of Rule No. 41, as to the undertaking to be filed by plaintiff.

Rule 43.

What bill for must state.

If the injunction prayed for be to stay proceedings at law, the bill must state whether an issue has been joined, or a verdict or judgment obtained, and the injunction, if granted, may stay all proceedings after issue joined, or permit the defendant to proceed to judgment, notwithstanding the injunction, without prejudice to the complainant's equities.

Rule 44.*To stay ejectment or replevin.*

If an action of ejectment, or other suit at law to recover possession of land, or to recover possession of specific chattels, be at issue, no injunction shall be granted to stay the same until the complainant, with surety or sureties approved by the justice, has filed an undertaking in the suit *to pay such rent and intervening damages as may be finally adjudged against the complainant, and stipulating that judgment may be given against the principal and sureties for the same if the bill be dismissed for want of equity.*

Rule 45.*Motion to dissolve or to discharge.*

If an injunction or *ne exeat* be granted *ex parte* before answer, the defendant, on due notice, may move to dissolve the injunction or discharge the *ne exeat* on the bill only; and if his motion be allowed, it may be with or without costs, in the discretion of the justice.

In this case the complainant shall serve a copy of the bill upon the defendant's solicitor within six days after he has entered his appearance and notice thereof; and if a copy of the bill be not delivered within said time, the defendant may, upon due notice to the plaintiff, move to dissolve the injunction, or discharge the *ne exeat* with costs.

Rule 46.*Not granted unless prayed for and bill verified.*

No preliminary injunction or *ne exeat* shall be granted *ex parte* unless prayed for in the bill, and the bill be verified in the manner prescribed in Rule 90.

Rule 47.*Not dissolved unless answer verified.*

An injunction or *ne exeat* shall not be dissolved or discharged, although the whole equity of the bill be denied by the answer, unless the answer is duly verified, provided the verification thereof is not waived by the plaintiff in the bill.

Rule 48.*Affidavits on application for.*

The application for an injunction or *ne exeat*, whether *ex parte* or upon notice, may be fortified by affidavits of third persons in support of the allegations of the bill of petition to be filed therewith; and upon motion of the defendant to dissolve his answer may be supported in like manner, by affidavits to be filed with said answer.

REVIVOR AND SUPPLEMENTAL BILLS.**Rule 49.***Bill of revivor.*

Whenever a suit in equity shall become abated by the death of either party, or by any other event, the same may be revived by a bill of revivor, or a bill in the nature of a bill of revivor, as the circumstances of the case may require, filed by the proper parties entitled to revive the same, which bill may be filed in the clerk's office at any time; and upon suggestion of the facts, the proper process of subpoena shall, as of course, be issued by the clerk, requiring the proper representatives of the other party to appear and show cause, if any they have, why the cause should not be revived. And if no cause shall be shown at the next rule day which shall occur after fourteen days from the time of the service of the same process, the suit shall stand revived, as of course.

Rule 50.*Supplemental bill.*

Leave to file a supplemental bill, when deemed necessary, may be granted by the justice holding the special term, or, in his absence, by any other justice of the court, upon sufficient cause shown, and notice of the application to the opposite party.

And if leave is granted to file such supplemental bill, the defendant shall demur, plead or answer thereto, on the next succeeding rule day after the supplemental bill is filed in the clerk's office, unless some other time shall be assigned by a judge of the court.

Rule 51.*Matter of.*

It shall not be necessary in any bill of revivor, or supplemental bill, to set forth any of the statements in the original suit, unless the special circumstances of the case may require it.

ANSWER.**Rule 52.***Time of filing, and failing to file, answer.*

If defence is not made by plea or demurrer, the defendant must file his answer in the clerk's office by the rule day next succeeding that of entering his appearance. In default thereof, the proceedings shall be the same as are prescribed in case of default in appearing. Rule 15.

Rule 53.*Frame of the answer.*

The answer, after the introductory part of it, shall be divided into paragraphs in the same manner as the bill, and each paragraph in the answer shall correspond with the paragraph in the bill of the same number.

Rule 54.*Amendment of, before and after replication.*

After an answer is put in, it may be amended as of course, in any matter of form, as by filling up a blank, or correcting a date, or reference to a document or other small matter, and be re-sworn, at any time before a replication is put in, or the cause is set down for a hearing upon bill and answer. But after replication, or such setting down for hearing, it shall not be amended in any material matters, as by adding new facts or defences, or qualifying or altering the original statements, except by special leave of the court or of a justice thereof, upon motion and cause shown after due notice to the adverse party, supported, if required, by affidavit. And in every case where leave is so granted, the court, or the justice granting the same,

may, in his discretion, require that the same be separately engrossed and added as a distinct amendment to the original answer, so as to be distinguished therefrom.

Rule 55.

Exceptions to answer, time for filing.

After an answer is filed, and notice thereof given to the plaintiff's solicitor, the plaintiff shall be allowed ten days to file in the clerk's office exceptions thereto for insufficiency, unless a longer time shall be allowed by a justice for the purpose, upon cause shown; and if no exception shall be filed thereto within that period, the answer shall be deemed and taken to be sufficient.

Rule 56.

Exceptions, when to be heard.

Where exceptions shall be filed to the answer for insufficiency within the period prescribed by these rules, if the defendant shall not submit to the same, and file an amended answer within ten days, and give notice thereof to the plaintiff, the plaintiff shall forthwith set them down for a hearing on the next succeeding rule day thereafter, before a justice of the court, and shall enter, as of course, in the order book, an order for that purpose. And if he shall not so set down the same for a hearing, the exceptions shall be deemed abandoned, and the answer shall be deemed sufficient: provided, however, that the court, or any justice thereof, may for good cause shown enlarge the time for filing exceptions, or for answering the same, in his discretion, upon such terms as he may deem reasonable.

Rule 57.

Allowance of exceptions—attachment.

If at the hearing the exceptions shall be allowed, the defendant shall be bound to put in a full and complete answer thereto within ten days; otherwise the plaintiff shall, as of course, be entitled to take the bill, so far as the matter of such exceptions is concerned, as confessed, or, at his election, he

may have a writ of attachment to compel the defendant to make a better answer to the matter of the exceptions; and the defendant, when he is in custody upon such writ, shall not be discharged therefrom but by an order of the court, or of a judge thereof, upon his putting in such answer and complying with such other terms as the court or judge may direct.

Rule 58.

Exceptions overruled—costs.

If, upon argument, the plaintiff's exceptions to the answer shall be overruled, or the answer shall be adjudged insufficient, the prevailing party shall be entitled to all the costs occasioned thereby, unless otherwise directed by the court, or the judge thereof, at the hearing upon the exceptions.

Rule 59.

Separate answers, costs of.

When the same solicitor is employed for two or more defendants, and separate answers shall be filed, or other proceedings had by two or more of the defendants separately, costs shall not be allowed for such separate answers or other proceedings, unless the court determine that such separate answers and proceedings were necessary or proper, and ought not to have been joined together.

REPLICATION AND ISSUE.

Rule 60.

Form of replication.

No special replication to any answer shall be filed. The general replication may be in the following or equivalent form :

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, THE
 — DAY OF —, 18—.

A. B., Complainant,	}	In Equity. No. —.
<i>vs.</i>		
C. D., Defendant.		

The complainant hereby joins issue with the defendant [and

will hear the cause on bill and answer against the defendant], [and on the order to take the bill as confessed against the defendant].

Rule 61.

Time of filing.

Whenever the answer of the defendant shall be excepted to, and shall be adjudged or deemed sufficient, the plaintiff shall file the general replication thereto within ten days thereafter; and whenever the answer of the defendant shall not be excepted to, the plaintiff shall file the general replication thereto within ten days after notice of the filing of such answer; and in all cases where the general replication is filed, the cause shall be deemed to all intents and purposes at issue, without any rejoinder or other pleading on either side.

Rule 62.

Not filed in time—what.

If the plaintiff shall omit or refuse to file such replication within the prescribed period, the defendant shall be entitled to an order, as of course, for a dismissal of the suit; and the suit shall thereupon stand dismissed, unless the court, or a judge thereof, shall, upon motion for cause shown, allow a replication to be filed *nunc pro tunc*, the plaintiff submitting to speed the cause, and to such other terms as may be directed.

Rule 63.

Manner of setting causes for hearing and placing same on calendar.

No cause in equity shall be set down for hearing unless the same be at issue and ready for hearing, or be properly set down for hearing on bill and answer, or bill and answer and replication; and every cause may be ordered by either party or his counsel to be placed upon the calendar, provided such order be given at least five days previous to the first day of the next special term. But any cause once properly set down for hearing and placed upon the calendar, if not disposed of by the court, shall remain upon the calendar in its proper order.

June 6, 1866, 1 General Term Minutes, 145.

EVIDENCE.

Rule 64.

Answer.—If the complainant, in his bill, waive an answer under oath, or only require an answer under oath to certain specified paragraphs of his bill, the answer of the defendant though under oath, except such parts of it as shall be directly responsive to such paragraph, shall not be evidence in his favor, unless the cause be set down on bill and answer only ; but may nevertheless, be used as an affidavit, with the same effect as heretofore, on motion to grant or dismiss an injunction, or any other incidental motion in the cause ; but this shall not prevent a defendant from being a witness in his own behalf, under Section 3 of the act of Congress of July 2, 1864, 13 Stats., 374, (Feb. 15, 1873, 2 General Term Minutes, 142.)

Deposition of resident witness.—After the cause is at issue, either party may give notice to the other that he desires the evidence to be adduced in the cause to be taken orally, and thereupon all the witnesses to be examined, if they live or be in the District, shall be examined before one of the examiners of the court, or before an examiner to be specially appointed by the court, the examiner to be furnished with a copy of the bill and answer, if any ; and such examination shall take place in the presence of the parties or their agents, by their counsel or solicitors, and the witnesses shall be subject to cross-examination and re-examination, and which shall be conducted, as near as may be, in the mode now used in common law courts. The depositions taken upon such oral examination shall be taken down in writing by the examiner in the form of narrative, unless either party request that the examination shall be by question and answer ; and when completed, shall be read over to the witness and signed by him in the presence of the parties or counsel, or such of them as may attend : provided, if the witness shall refuse to sign the said deposition, then the examiner shall sign the same ; and the examiner may, upon all examinations, state any special matters to the court as he shall think fit ; and any question or questions which may be objected to shall be noted by the examiner upon the deposition, but he shall not have power to decide on the competency, materiality,

or relevancy of the questions, and the court shall have power to deal with the costs of incompetent, immaterial, or irrelevant depositions, or parts of them, as may be just.

In case of the refusal of witness to attend, to be sworn, or to answer any question put by the examiner, or by counsel or solicitor, the same shall be reported to the court by the examiner, when such order shall be made as may be deemed best.

Notice shall be given by the respective counsel or solicitors to the opposite counsel, or solicitors, or parties, of the time and place of the examination, for such reasonable time as the examiner may fix by order in each cause.

When the examination of witnesses before the examiner is concluded, the original deposition, authenticated by the signature of the examiner, shall be transmitted by him to the clerk of the court, to be there filed of record in the same mode as prescribed in the 30th section of Act of Congress, September 24, 1789.

Deposition of non-resident witness.

Where the testimony of non-resident witnesses is desired by either party, the court, in term time, or any judge in vacation may, on motion designating the names of such witnesses, appoint an examiner to take such testimony, to whom the clerk shall thereupon issue a commission under the seal of the court; and said testimony shall be taken on written interrogatories and cross-interrogatories, which written interrogatories shall be filed in the clerk's office at least ten days before the issue of such commission, so that the adverse party may have opportunity to file cross-interrogatories. But the court or judge, for special cause shown, may direct that such testimony shall be taken orally. 3 M. 72.

Rule 65.

Time for taking.

Where the evidence to be adduced in a cause is to be taken orally, as provided in Rule No. 64, the court may, on motion of either party, assign a time within which the complainant shall take his evidence in support of the bill, and a time thereafter within which the defendant shall take his evidence in defence, and a time thereafter within which the complainant shall

take his evidence in reply; and no further evidence shall be taken in the cause, unless by agreement of the parties, or by leave of court first obtained, on motion, for cause shown.

Rule 66.

Publication.

Immediately upon the return of the commissions and depositions containing the testimony into the clerk's office, publication thereof may be made by the clerk.

Rule 67.

De bene esse.

After any bill filed, and before the defendant hath answered the same, upon affidavit made that any of the plaintiff's witnesses are aged or infirm, or going out of the country, or that any one of them is a single witness to a material fact, the clerk of the court shall, as of course, upon the application of the plaintiff, issue a commission to such commissioner or commissioners as a judge of the court may direct, to take the examination of such witness or witnesses *de bene esse*, upon giving due notice to the adverse party of the time and place of taking his testimony.

Rule 68.

Form of last interrogatory.

The last written interrogatory to a witness may be substantially, "Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer."

CROSS BILL.

Rule 69.

For discovery only answer to, and use of answer.

Where a defendant in equity files a cross bill for discovery only against the plaintiff in the original bill, the defendant to

the original bill shall first answer thereto, before the original plaintiff shall be compellable to answer the cross bill. The answer of the original plaintiff to such cross bill may be read and used by the party filing the cross bill, at the hearing, in the same manner and under the same restrictions as the answer praying relief may now be read and used.

REFERENCE TO AND PROCEEDINGS BEFORE THE AUDITOR.

Rule 70.

Account of personalty, of person deceased.

Every decree for an account of the personal estate of a testator or intestate shall contain a direction to the auditor, to whom it is referred to take the same, to inquire and state to the court what parts, if any, of such personal estate are outstanding or undisposed of, unless the court shall otherwise direct.

Rule 71.

When matter referred, to be presented to auditor.

Whenever any reference of any matter is made to the auditor to examine and report thereon, the party at whose instance, or for whose benefit, the reference is made, shall cause the same to be presented to the auditor for a hearing on or before the next rule day succeeding the time when the reference was made; if he shall omit to do so, the adverse party shall be at liberty forthwith to cause proceedings to be had before the auditor, at the costs of the party procuring the reference.

Rule 72.

Time and place of hearing and notice.

Upon every such reference the auditor shall, as soon as he reasonably can after the same is brought before him, assign a time and place for proceedings in the same, and give due notice thereof to each of the parties or their solicitors; and if either party fail to appear at the time and place appointed, the auditor may proceed *ex parte*, or, in his discretion, adjourn the examination and proceedings to a future day, giving notice to the

absent party or his solicitor of such adjournment. The auditor shall proceed with all reasonable diligence in every such reference, and with the least practicable delay, and either party may apply to the court, or a justice thereof, for an order to the auditor to speed the proceedings, and to make his report, and to certify to the court or judge the reasons for any delay.

Rule 73.

Report not to recite facts.

In the reports made by the auditor to the court, no part of any state of facts, charge, affidavit, deposition, examination, or answer, brought in or used before him, shall be stated or recited. But such state of facts, charge, affidavit, deposition, examination, or answer shall be so identified, specified, and referred to as to inform the court what state of facts, charge, affidavit, deposition, examination, or answer was so brought in or used.

Rule 74.

Auditor's powers on hearing.

The auditor shall regulate all the proceedings in every hearing before him upon every such reference; and he shall have full authority—

To examine the parties in the cause upon oath touching all matters contained in the reference;

And also to require the production of all books, papers, writings, vouchers, and other documents applicable thereto;

And also to examine on oath *viva voce*, all witnesses produced by the parties before him, and to order the examination of other witnesses to be taken, under a commission to be issued upon his certificate from the clerk's office, or by deposition according to the acts of Congress, or otherwise as hereinafter provided;

And also to direct the mode in which the matters requiring evidence shall be proved before him;

And generally to do all other acts, and direct all other inquiries and proceedings in the matters before him, which he may deem necessary and proper to the justice and merits thereof, and the rights of the parties.

Rule 75.

Witness before auditor, commissioner, or examiner.

Witnesses who live within the District may, upon due notice to the opposite party, be summoned to appear before the commissioner appointed to take testimony, or before an auditor or examiner appointed in any cause, by subpoena in the usual form, which may be issued by the clerk in blank, and filled up by the party praying the same, or by the commissioner, auditor, or examiner requiring the attendance of the witnesses at the time and place specified, who shall be allowed for attendance the same compensation as for attendance in court; and if any witness shall refuse to appear, or to give evidence, it shall be deemed a contempt of the court, which being certified to the clerk's office by the commissioner, auditor, or examiner, an attachment may issue thereupon by order of the court or of any justice thereof in the same manner as if the contempt were for not attending, or for refusing to give testimony in the court. But nothing herein contained shall prevent the examination of witnesses *viva voce* when produced in open court, if the court shall in its discretion deem it advisable.

Rule 76.

Form of accounting before the auditor.

All parties accounting before the auditor shall bring in their respective accounts in the form of debtor and creditor; and any of the other parties who shall not be satisfied with the accounts so brought in shall be at liberty to examine the accounting party *viva voce*, or upon the interrogatories, in the auditor's office, or by deposition, as the auditor shall direct.

Rule 77.

Documentary evidence before auditor.

All affidavits, depositions, and documents, which have been previously made, read, or used in the court, upon any proceeding in any cause or matter, may be used before the auditor.

Rule 78.

Creditor or claimant examined.

The auditor shall be at liberty to examine any creditor or

other person coming in to claim before him, either upon written interrogatories or *viva voce*, or in both modes, as the nature of the case may appear to him to require. The evidence upon such examination shall be taken down by the auditor, or by some other person by his order and in his presence, if either party requires it, in order that the same may be used by the court if necessary.

Rule 79.

Compensation of auditor.

The compensation to be allowed to every auditor in chancery for his services in any particular case shall be fixed by the court in its discretion, having regard to all the circumstances thereof; and the compensation shall be charged upon and borne by such of the parties in the cause as the court shall direct. The auditor shall not be compelled to make out or return a report until his fees therefor be paid or secured to his satisfaction, unless the court to which the report is to be returned order it to be made out and returned without such payment or security.

EXCEPTIONS TO REPORT OF AUDITOR.

Rule 80.

Report and exceptions thereto.

The auditor, as soon as his report is ready, shall return the same into the clerk's office, and the day of the return shall be entered by the clerk in the order book. The parties shall have one month from the time of filing the report to file exceptions thereto; and if no exceptions are within that period filed by either party the report shall stand confirmed on the next rule day after the month is expired. If exceptions are filed they shall stand for hearing before the court, if the court is then in session; or if not, then at the next sitting of the court which shall be held thereafter by adjournment or otherwise.

Rule 81.

Cost of frivolous exceptions.

And in order to prevent exceptions to reports from being

filed for frivolous causes, or for mere delay, the party whose exceptions are overruled shall, for every exception overruled, pay costs to the other party, and for every exception allowed shall be entitled to costs—the costs to be fixed in each case by the court, by a standing rule of the Circuit Court.

DECREES.

Rule 82.

Mistakes in.

Clerical mistakes in decrees, or decretal orders, or errors arising from any accidental slip or omission, may, at any time before an actual enrolment thereof, be corrected by order of the court or a judge thereof, upon petition, without the form or expense of a rehearing.

Rule 83.

Form and substance of.

In drawing up decrees and orders, neither the bill, nor answer, nor other pleadings, nor any part thereof, nor the report of any master, nor any other prior proceeding, shall be recited or stated in the decree or order; but the decree and order shall begin, in substance, as follows: “*This cause came on to be heard (or to be further heard, as the case may be) at this term, and was argued by counsel; and thereupon, upon consideration thereof, it is ordered, adjudged, and decreed as follows, viz:*” [Here insert the decree or order.]

Rule 84.

Execution of decree for payment of money.

Final process to execute any decree may, if the decree be solely for the payment of money, be by a writ of *fieri facias*, or by sequestration attachment against real estate, goods, chattels, or credits of the defendant.

May 17, 1873, 2 M. G. T., 127.

Rule 85.

Execution of decree for specific act.

If the decree be for the performance of any specific act, as,

for example, for the execution of a conveyance of land, or the delivery of possession, or the delivering up of deeds, or other documents, the decree shall, in all cases, prescribe the time within which the act shall be done, of which the defendant shall be bound without further service to take notice; and upon affidavit of the plaintiff or his solicitor, filed in the clerk's office, that the same has not been complied with within the prescribed time, the clerk shall issue a writ of attachment against the delinquent party, from which, if attached thereon, he shall not be discharged, unless upon a full compliance with the decree and the payment of all costs, or upon a special order of the court, or of a judge thereof, upon motion and affidavit, enlarging the time for the performance thereof. If the delinquent party cannot be found, a writ of sequestration shall issue against his estate upon the return of *non est inventus*, to compel obedience to the decree.

Rule 86.

For delivery of possession.

When any decree or order is for the delivery of possession, upon proof made by affidavit of a demand and refusal to obey the decree or order, the party prosecuting the same shall be entitled to a writ of assistance from the clerk of the court.

GUARDIAN AND PROCHEIN AMI.

Rule 87.

Guardians ad litem to defend a suit may be appointed by the court for infants or other persons who are under guardianship, or otherwise incapable to sue for themselves; all infants and other persons so incapable may sue by their guardians, if any, or by their *prochein ami*; subject, however, to such orders as the court may direct for the protection of infants and other persons.

REHEARING.

Rule 88.

How applied for.

Every petition for a rehearing shall contain the special

matter or cause on which such rehearing is applied for, shall be signed by counsel, and the facts therein stated, if not apparent on the record, shall be verified by the oath of the party, or by some other person. No rehearing shall be granted after the term at which the final decree of the court shall have been entered and recorded if an appeal lies to the Supreme Court. But if no appeal lies, the petition may be admitted at any time before the end of the next term of the court, in the discretion of the court.

BILL OF REVIEW.

Time of filing.

No bill of review shall be filed but within two years after the entry of the decree or order, with the exception specified in the proviso to section 1008 of the Revised Statutes of the United States.

April 22, 1878, 3 M. G. T., 164.

Rule 89.

Practice in English Chancery.

In all cases where these rules do not apply, the practice of the court shall be regulated by the present practice of the high court of chancery in England, so far as the same may reasonably be applied consistently with the local circumstances and local convenience of the District, not as positive rules, but as furnishing just analogies to regulate the practice.

Rule 90.

Oath or Affirmation.

Whenever under these rules an oath is or may be required to be taken, the party may, if conscientiously scrupulous of taking an oath, in lieu thereof make solemn affirmation to the truth of the facts stated by him.

Rule 91.

Verification of Bill, &c.

Every verification of a bill, answer, or petition, shall be to the following effect: "I do solemnly swear [*affirm*] that I have read [*heard read*] the *bill, answer, petition,*] by me sub-

scribed, and know the contents thereof, and that the facts therein stated, upon my personal knowledge, are true, and that the facts therein stated upon information and belief, I believe to be true."

DIVORCE.

Rule 92.

In suits for divorce of either kind, or for nullity of marriage, if the defendant fail to answer the petition, or if the facts charged in the petition are not denied in the answer, the court shall order reference to take proof of all the material facts stated in the petition; but in no case shall such reference be made to a person named by either party.

Rule 93.

No divorce shall be granted for adultery unless the petition, duly verified, charge that the adultery was committed without the consent, connivance, privity, or procurement of the petitioner, and that, after discovery of the offence, the petitioner has not voluntarily cohabited with the defendant.

Rule 94.

If the suit be for nullity of marriage *on the ground that the petitioner was under the age of consent at the time of the marriage*, it shall be averred in the bill that the parties thereto have not freely cohabited, as man and wife, after the petitioner attained said age.

Rule 95.

If the suit be for nullity of marriage *on the ground that the petitioner's consent was procured by fraud*, it must be averred in the petition that there has been no voluntary cohabitation between the parties as man and wife.

Rule 96.

If the suit be for nullity of marriage *on the ground of petitioner's lunacy*, it must be averred in the bill that the

lunacy still continues, or that the parties have not cohabited since the petitioner's restoration to reason.

Rule 97.

All bills for divorce, or for separation, or for nullity of marriage, must be verified in the mode prescribed in Rule 53. The answer to the petition may or may not be verified, at the option of the petitioner.

Rule 98.

On reference to take proof of the facts charged in a petition for a divorce from bed and board, the examination of the petitioner, on oath or affirmation, may be taken as to any cruel or inhuman treatment alleged in the petition to have taken place when no witness was present competent to testify.

Rule 99.

The defendant in the answer may set up adultery of the petitioner, or any other matter which would be a bar to a divorce or annulment of the marriage; and if an issue be taken thereon it shall be tried at the same time, in the same manner, as the other matters of the cause.

Rule 100.

Pleadings, &c., to be written, &c., legibly.

All pleadings and other proceedings, and copies thereof, shall be fairly and legibly written and endorsed with the number and title of the cause; and if not so done the clerk shall refuse to file the same.

Rule 101.

Costs of Copies.

The lawful fee for a copy of any paper on file in any cause or matter pending in the Supreme Court of the District of Columbia, furnished by the clerk to any party therein, shall be charged as part of the costs of the cause or matter and collected as such.

February 19, 1877, 3 M. G. T. 20.

FORM OF BILL AND ANSWER, ACCORDING TO
RULES 17 AND 53.

No.—, Docket 10.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, THE — DAY
OF —, 18—.

In Equity.

Between { John Holford and Richard Davis, plaintiffs,
 and
 Henry Hawes, defendant.

*To the Supreme Court of the District of Columbia holding an Equity Court
for said District :*

The plaintiffs complain as follows :

1. They are residents of the city of Baltimore, in the State of Maryland, and are the legal personal representatives of Henry Baker, who died on the 7th day of May, 1867, having by his will, bearing date the 10th day of January, 1864, devised to the plaintiffs and their heirs all estates vested in him by way of mortgage, and having appointed the plaintiffs to be his executors; and the said will was, on the 1st day of June, 1867, proved by the plaintiffs in the Orphans' Court of the District of Columbia.

2. The above named defendant, Henry Hawes, is a citizen of the District of Columbia, and being seized in fee simple of a house and premises—being No. 500 Pennsylvania avenue, between Fifth and Sixth streets, City of Washington—by deed bearing date the 1st day of June, 1864, and duly made and executed between and by the said defendant of the one part, and said Henry Baker of the other part, for the consideration therein mentioned, granted the said house and premises unto and to the use of the said Henry Baker and his heirs; subject, nevertheless, to a proviso in the said indenture contained, for redemption and reconveyance of the said house and premises, on payment, by said defendant, his heirs, executors, administrators, or assigns, to the said Henry Baker, his executors, administrators, or assigns, of the sum of \$500, with interest thereon from the date of the said indenture, at the rate of six per centum per annum, on a day in the said indenture named, (in which payment default was made,) as by said indenture when produced will appear.

3. The defendant has from time to time made various small payments on account of interest due on the said deed of mortgage of the first of June, 1864; but a large arrear of interest, together with the whole of said principal sum of \$500, is due and owing to the plaintiffs, as such personal representatives as aforesaid, on the security of the said mortgage.

4. On the 7th day of April, 1868, the plaintiffs discovered that the defendant intended to pull down the said house, and that he had advertised the bricks thereof to be sold as building materials, and that he had entered

into a contract with one John Smithers for the execution of the work of pulling down the same.

5. If the said house be pulled down, the said premises will be an insufficient security to the plaintiffs for the money due on the said mortgage security.

6. The defendant ought to be restrained from pulling down or injuring the said house, and ought to be decreed to pay to the plaintiffs, as such personal representatives as aforesaid, what shall be found due to them for principal, interest, and costs on the said security, on an account to be taken for the purpose, together with the costs of this suit, or to be foreclosed absolutely of all right and equity of redemption in or to the said mortgaged premises.

7. The defendant has in his possession or power divers hand-bills, contracts, books, papers, and documents, whereby, if produced, the truth of the matters aforesaid would appear.

Prayer.

The plaintiffs therefore pray as follows:

1. That an account be taken of what is due for principal and interest on said mortgage.

2. That the defendant may be decreed to pay to the plaintiffs, as personal representatives of the said Henry Baker, what shall be so found due, together with the costs of this suit, by a short day to be appointed for that purpose; or, in default thereof, that the defendant, Henry Hawes, and all persons claiming under him, may be absolutely foreclosed of all right and equity of redemption in or to the said mortgaged premises.

3. That the defendant, Henry Hawes, his servants, agents, and workmen, may be restrained by order and injunction of this court from pulling down, or suffering to be pulled down, the said mortgaged house, and from selling the materials whereof the said house is composed.

4. That for the purposes aforesaid all necessary accounts may be taken, inquiries made, and directions given.

5. That the plaintiffs may have such further or other relief in the premises as the nature of the case may require.

To which end, the plaintiffs pray for process against the defendant Henry Hawes, requiring him to appear and answer the exigency of the bill. [*Frame this prayer as prescribed in Rules 22 and 23.*]

The defendant to this bill of complaint is—

HENRY HAWES.

X. Y.,
Counsel for plaintiff.

No.—, Docket 10.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, THE — DAY
OF —, 18—.

In Equity.

Between { John Holford and Richard Davis, plaintiffs,
 and
 Henry Hawes, defendant,

The answer of the above-named defendant, Henry Hawes, to the bill of complaint of the above-named plaintiffs.

In answer to the said bill of complaint, I say as follows:

1. I do not know and cannot set forth whether the said plaintiffs are the legal personal representatives of Henry Baker or not; nor whether he died on the 7th day of May, 1867, having, by his will, devised to the plaintiffs and their heirs all estates vested in him by way of mortgage, or appointed the plaintiffs to be his executors; nor whether the said will was on the first day of June, 1867, proved by the plaintiffs in the Orphans' Court of the District of Columbia; but I have reason to doubt that the facts are as in that behalf alleged in the said bill of complaint. I admit that I have heard that the said Henry Baker died some time in the year 1867.

2. I admit that I was, on the first day of June, 1864, seized in fee simple of the premises in the second paragraph of the bill of complaint of the said plaintiffs mentioned. And I admit that the deed, in the said second paragraph of said bill mentioned, was of such date, and made between such parties, as in the said paragraph of said bill alleged, and that the same was executed by me. I believe that the said deed was not executed by the said Henry Baker in the said bill mentioned. I believe that the said deed was of or to the purport and effect in the said second paragraph of said bill in that behalf set forth; but for greater certainty I crave leave to refer to the same when it shall be produced and shown to the court.

The said deed was made under the following circumstances: The said Henry Baker was a bachelor, without any near relations, and for many years previously to the year 1864, and thenceforward to his death, had suffered from continual ill-health and infirmity. My mother, Sarah Hawes, was in his service as housekeeper from the year 1845 down to the time of his death, and was in continual attendance upon him, and he frequently, during that time, expressed to her his gratitude for her attention to his comfort in that his illness.

I attained my age of 21 years in the year 1864. In the early part of that year my mother applied to the said Henry Baker to advance me the sum of \$500 to enable me to enter business, which he agreed to do on having the repayment thereof, with interest, secured by the said deed of the 1st of June, 1864.

In the month of May, 1864, the said Henry Baker wrote, signed, and sent to me a letter, bearing no date, containing the words and figures following: "All is arranged about the security you are to give. I hope I shall never have occasion to enforce it; and that nothing will compel me to change my intention of rewarding your mother and yourself for her long and faithful services to me," as by such letter when produced will appear.

3. I have never made any payment whatsoever on account of interest due on the said indenture, and I was never called upon to pay interest thereon by the said Henry Baker in his lifetime.

My said mother died on the 27th day of December, 1867.

Under the circumstances hereinbefore appearing, I submit that nothing is due on the said deed from me to the plaintiffs, whether as such alleged personal representatives or otherwise, but I admit that nothing has ever been paid on account of the principal money secured thereby.

4. I do not know and cannot set forth whether the plaintiffs did, on the 7th day of April, 1868, discover, but I admit that it is the fact, that I intend to pull down the said house in the said bill mentioned, and that I have advertised the bricks composing the same to be sold as building materials. I deny that it is true that I have entered into a contract with John Smithers, or with any other person, for the execution of the work of pulling down the same.

5. If the said house be pulled down, I admit that the said premises would be an insufficient security for the sum of \$500, with interest thereon at the rate of 6 per centum per annum from the first day of June, 1864.

6. But I submit that I have a right to pull down the said house, and to sell the bricks composing the same as building materials, and that the injunction awarded against me by this court on the 15th day of April, 1868, ought to be dissolved, with costs.

7. I have in my possession the said letter of the said Henry Baker, written in the month of May, 1864. But, except as aforesaid, I deny that I have in my possession or power, or in that of my solicitors or agents, solicitor or agent, various or any handbills or handbill, contracts or contract, receipts or receipt, documents or document, papers or paper, relating to the matters in the said bill mentioned, or any of them, or whereby, if produced, the truth of such matters, or any of them, would appear.

X. Z., *Solicitor for Defendant.*

HENRY HAWES.

Verify the answer as prescribed in Rule 91.

COMMISSIONS TO TRUSTEES AND ALLOWANCE IN LIEU OF DOWER.

From Alexander's Chancery Practice :

Commissions.

On sales under decrees or orders of the court the following allowances are made to trustees :

On the 1st \$300, 7 per cent.	-		\$21 00	
2d 300, 6 do.	-	-	18 00—	\$39 00
3d 300, 5 do.	-		15 00—	54 00
4th 300, 5 do.	-	-	12 00—	66 00
5th 300, $3\frac{1}{2}$ do.	-	-	10 50—	76 50
6th 300, $3\frac{1}{2}$ do.	-	-	10 50—	87 00
7th 300, 3 do.	-	-	9 00—	96 00
8th 300, 3 do.	-	-	9 00—	105 00
9th 300, $2\frac{1}{2}$ do.	-	-	7 50—	112 50
10th 300, $2\frac{1}{2}$ do.	-		7 50—	120 00

And 3 per cent. on all above \$3,000, besides an allowance for expenses not personal. The above allowance subject to be increased in cases of postponement at the request of defendants, or of extraordinary difficulty or trouble from other circumstances and to be lessened in case of negligence, at the discretion of the chancellor.

Table of allowance to a healthy woman in lieu of her right of dower in land sold under decrees :

Under 30 years of age,	-	-	-	-	one-sixth.
Above 30 and under 35,	-	-	-	-	two-thirteenths.
“ 35 “ 40,	-	-	-	-	one-seventh.
“ 40 “ 45,	-	-	-	-	two-fifteenths.
“ 45 “ 51,	-	-	-	-	one-eighth.
“ 51 “ 56,	-	-	-	-	one-ninth.
“ 56 “ 61,	-	-	-	-	one-tenth.
“ 61 “ 67,	-	-	-	-	one-twelfth.
“ 67 “ 72,	-	-	-	-	one-fourteenth.
“ 72 “ 77,	-	-	-	-	one-eighteenth.
“ 77 - - -	-	-	-	-	one-twentieth.

ORPHANS' COURT RULES.

Rule respecting Applications for Letters Testamentary and of Administration.

Hereafter, all applications to this court for letters testamentary and of administration shall be in writing, duly sworn to, setting forth, in substance, the residence and citizenship of the petitioner; the death and date thereof, of the person on whose estate the letters are desired; his or her last domicile; the estimated value of the personal estate, the character thereof, and where situated or being; whether the decedent died testate or intestate; the names of the next of kin, whether residents or non-residents, adults or minors; and if minors, their respective ages, and such other facts as the applicant may deem necessary and proper in the premises.

Upon the filing of such application the Register of Wills shall issue a citation, to be served on all the next of kin of the decedent who may be over the age of fourteen years, residents of or to be found within the District of Columbia, commanding them to appear in this court on a day named in such citation, not less than seven days from the date of service, to show cause, if any they have, why letters of administration or testamentary, as the case may be, should not be granted as prayed in the petition.

Should any of the next of kin, or persons entitled by law to the estate, be non-residents or not to be found, notice of such application to them shall be by publication in one or more newspapers printed or published in the city of Washington, for such time and in such manner as the court may direct, setting forth that application for letters on the decedent's estate has been made, and that they, and all parties interested, appear on a day named in such notice, to show cause why the application should not be granted. The evidence of such publication to

be the affidavit of the publisher of the paper wherein it was inserted, or some competent person having personal knowledge of the publication.—Jan., 1874.

Guardians' Accounts.

It appearing to the court that a former practice of allowing certain sums annually in gross for the maintenance and education of wards by their guardians, is detrimental to the interest of wards, and leads to their being brought in debt to their guardian, and is likewise open to abuse: It is this 27th day of March, A. D. 1877, ordered that the said practice is hereby expressly abolished, and hereafter all allowances claimed by guardians for payments made by them on behalf of their wards or their estates shall be sustained by vouchers in due form; by regular books of account exhibited, or by claims made out and sworn to by the guardian and approved and passed by the court.

Minutes Orphans' Court, No. 12, p. 420.

Delinquent Guardians, Etc.

It is ordered, this fifth day of December, 1879, that whenever any executor, administrator or guardian, shall have failed to present to the court at the Special Term thereof, held for the transaction of Orphans' Court business, an account of his administration or trust in the manner and form prescribed by law, or by the order or allowance of the court, a citation shall be issued forthwith to such delinquent executor, administrator or guardian, to appear and exhibit such account.

3 Minutes, General Term, p. 468.

RULES
OF THE
SUPREME COURT OF THE DISTRICT OF COLUMBIA,
IN ADMIRALTY,
IN ADDITION TO THOSE PRESCRIBED BY THE
SUPREME COURT OF THE UNITED STATES.

Rule 1.

SECURITY BY LIBELLANT.

No process *in rem* shall be issued, nor shall any appearance or answer be received, or third party be permitted to intervene and claim, except on the part of the United States, unless a stipulation in the sum of one hundred dollars shall be first entered into by the party, and at least one surety, resident in the District, conditioned that the principal shall pay all costs assessed against him by the court.

Rule 2.

EXCEPTION AS TO SEAMEN SUING FOR WAGES.

Seamen suing *in rem* for wages, in their own right and for their own benefit, for services on board American vessels, and salvors coming into port in possession of the property libelled, shall not be required to give such security in the first instance. The court, on motion, with notice to the libellants, may, after the arrest of the property, for adequate cause, order the usual stipulation to be given in these cases, or that the property arrested be discharged.

Rule 3.

WHAT STIPULATIONS ARE TO CONTAIN.

All stipulations in admiralty causes shall be executed by the principal party (if within the district), and at least one surety resident therein, and shall contain the consent of the stipulators that in case of default, or contumacy, on the part of the principal or sureties, execution to the amount named in such stipulation may issue against the goods, chattels, and lands of the stipulators.

Rule 4.

INCREASE OF SECURITY.

In all cases of stipulations in admiralty causes, any party having an interest in the subject-matter may move the court, on special cause shown, for greater or better security, giving the opposite party two days' notice thereof, unless a shorter time is allowed by order of the judge.

Rule 5.

DEPOSIT OF MONEY IN PLACE OF STIPULATION.

Instead of the bond or stipulation provided for in the three preceding rules, the court may direct the deposit in court of such a sum of money as the court may consider a sufficient security in the premises.

Rule 6.

NOTICE OF ARREST, AND RETURN OF PROCESS.

Notice of the arrest of property by attachment *in rem* on behalf of individual suitors shall be published and affixed in the manner directed by the act of Congress in case of seizures on the part of the United States, except when the judge, by special order, directs a shorter notice than fourteen days; and except that instead of the substance of the libel a short statement of its purport may be given. Monitions, citations, and warrants of arrest shall in all cases be made returnable in fourteen days, except when the judge, by special order, shall designate an earlier day.

Rule 7.

NOTICE OF SALE.

Notice of sale of property after condemnation in suits *in rem* (except under the revenue laws and on seizure by the United States), shall be six days, unless otherwise specially directed by the decree of condemnation and sale.

Rule 8.

DELIVERY OF PROPERTY ARRESTED, ON PAYMENT OF MONEY INTO COURT.

In suits *in rem* for seamen's wages, and in all other actions *in rem* for sums certain, the claimant or respondent may pay into court the amount sworn to be due in the libel, with interest computed thereon from the time it was due to the return day of the attachment, and the costs of the officers of the court already accrued, together with the sum of \$50, to cover further costs, &c.; or, at his option, may give stipulation to pay such sworn amount, with interest, costs, and damages (first paying into court the costs of the officers of the court already accrued), and in either case may thereupon have an order entered instantly for the delivery of the property arrested without having the same appraised.

Rule 9.

DELIVERY OF PROPERTY ARRESTED ON APPRAISEMENT.

In all cases where property is arrested, the same may, upon application of the claimant, be delivered to him on compliance with the conditions prescribed as to ships by Rule 10 in admiralty, adopted by the Supreme Court.

Rule 10.

COSTS TO BE PAID BEFORE DELIVERY.

No vessel, goods, wares, or merchandise in the custody of the marshal shall be released from detention, upon appraisement and surety, until the costs and charges of the officers of the court, so far as the same shall have accrued, shall first be paid into court by the party at whose instance the appraise-

ment shall take place, to abide the decision of the court in respect to such costs.

Rule 11.

APPOINTMENT OF APPRAISER.

Only one appraiser is to be appointed in suits by individuals, unless otherwise specially ordered by the judge; and if the respective parties do not agree in writing upon the appraiser to be appointed, the clerk shall forthwith name, either party having a right of instant appeal to the judge from such nomination for adequate cause.

Rule 12.

REFERENCE TO AUDITOR.

In cases of demands arising, not *ex delicto*, on a decree in favor of the libellant by default or on hearing, it shall be referred to the auditor to ascertain the amount due the libellant; but reference may also be made in cases of tort or on allegations of incidental or consequential damages if desired by either party.

Rule 13.

REFERENCE TO ASSESSORS.

Upon any sufficient cause shown, such reference may be made to assessors, or otherwise, according to the course and custom of courts of civil and admiralty jurisdiction.

Rule 14.

DECREE OF CONFIRMATION.

Upon the coming in of the report of the auditor or assessors, a decree of confirmation may be entered, on motion, without notice, unless otherwise ordered by the court, or the report shall be excepted to, and in the latter case the exception shall be overruled or held abandoned, unless brought to a hearing at the first stated or special sessions of the court occurring next after the filing of the report.

Rule 15.

FAILURE TO TAKE PROCEEDINGS ON REPORT.

If the libellant take no proceedings on the report within five

days after the filing thereof in open court, the respondent may move the court to dismiss the libel for want of due prosecution.

Rule 16.

NEGLECT TO PROCEED WITH DISPATCH.

If the promovent in a libel or information neglects to proceed in the cause with the dispatch the course of the court admits, the respondent or claimant may have the libel or information dismissed on motion, unless the delay is by order of the judge, or the act of the respondent or claimant. Four days notice shall be given of the application to dismiss the action.

Rule 17.

APPEALS.

Appeals to the general term, from orders and decrees prepared in admiralty causes, shall be subject to the same rules and conditions that are applied to appeals from orders and decrees passed at the special terms of the court sitting in equity.

Proceedings in Prize.

Proceedings in prize shall be conducted according to the provisions of the act of Congress of June 30, 1864 (Stat. at L., vol. xiii., p. 306), and according to such rules as the court may hereafter prescribe.

XVII.

TABLES OF STATISTICS

RELATING TO THE

SUPREME COURT OF THE UNITED STATES,

THE

COURT OF CLAIMS,

AND THE

SUPREME COURT

OF THE

DISTRICT OF COLUMBIA,

CONTAINING

The Names, Places of Birth, Residences in Washington, Dates of Commissions, etc., etc., of the Justices and Officers of said Courts.

THE SUPREME COURT OF THE UNITED STATES.

Names of Justices, with the Judicial Circuits to which they are assigned, and list of States included in each Circuit.	Where and When Born.	Whence Appointed.	By Whom Appointed.	Date of Commission.	Residence in Washington.
<p>Chief Justice of the United States, MORRISON R. WAITE, Fourth Circuit, States of Maryland, Virginia, West Virginia, North Carolina, South Carolina.</p>	<p>Connecticut, November 29th, 1816.</p>	Ohio.	President Grant.	January 21st, 1874.	No. 1415 I Street.
<p>Associate Justices. SAMUEL F. MILLER. Eighth Circuit. States of Minnesota, Iowa, Mis- sour, Kansas, Arkansas, Ne- braska, Colorado.</p>	<p>Kentucky, April 5th, 1816.</p>	Iowa.	President Lincoln.	July 16th, 1862.	No. 1415 Massachusetts Av., N. W.
<p>STEPHEN J. FIELD, Ninth Circuit. States of California, Oregon, Nevada.</p>	<p>Connecticut, November 4th, 1816.</p>	California.	President Lincoln.	March 10th, 1863.	No. 21 First St., N. E. Capitol Hill.
<p>JOSEPH P. BRADLEY, Third Circuit. States of New Jersey, Pennsyl- vania, and Delaware.</p>	<p>New York, March 14th, 1813.</p>	New Jersey.	President Grant.	March 21st, 1870.	No. 201 I Street, corner New Jersey Av., N. W.
<p>JOHN M. HARLAN, Seventh Circuit. States of Indiana, Illinois, Wis- consin.</p>	<p>Kentucky, June 1st, 1833.</p>	Kentucky.	President Hayes.	November 29th, 1877.	No. 1623 Massachusetts Av., N. W.

WILLIAM B. WOODS, Fifth Circuit. States of Georgia, Florida, Alabama, Mississippi, Louisiana, Texas.	Ohio, August 3d, 1824.	Georgia.	President Hayes.	December 21st, 1880.	No. 1122 Vermont Avenue, N. W.
STANLEY MATTHEWS, Sixth Circuit. States of Ohio, Michigan, Kentucky, Tennessee.	Ohio, July 21st, 1824.	Ohio.	President Garfield.	May 12th, 1881.	No. 1800 N Street, corner Connecticut Avenue.
HORACE GRAY, First Circuit. States of Maine, New Hampshire, Massachusetts, and Rhode Island.	Massachusetts, March 24th, 1828.	Massachusetts.	President Arthur.	December 20th, 1881.	No. 1721 Rhode Island Avenue.
SAMUEL BLATCHFORD, Second Circuit. States of New York, Vermont, and Connecticut.	New York, March 9th, 1820.	New York.	President Arthur.	March 22d, 1882.	No. 1432 K Street, N. W.
Associate Justices who have resigned and are still living.					Resigned.
JOHN A. CAMPBELL.	Georgia, June 24th, 1811.	Alabama.	President Pierce.	March 23d, 1853.	April 25th, 1861, to take effect April 30th, 1861.
NOAH H. SWAYNE. [Deceased June 8th, 1884, since the foregoing went to press.]	Virginia, December 7th, 1804.	Ohio.	President Lincoln.	January 24th, 1862.	January 24th, 1861.
DAVID DAVIS.	Maryland, March 8th, 1815.	Illinois.	President Lincoln.	December 8th, 1862.	March 4th, 1877.
WILLIAM STRONG.	Connecticut, May 6th, 1808.	Pennsylvania.	President Grant.	February 18th, 1870.	December 14th, 1880.

THE SUPREME COURT OF THE UNITED STATES—Continued.

Names of Justices, with the Judicial Circuits to which they are assigned, and list of States included in each Circuit.	Where and When Born.	Whence Appointed.	By whom Ap- pointed.	Date of Commission.	Residence in Washington.
Associate Justices who have resigned and are still living. WARD HUNT.	New York, June 14th, 1810.	New York.	President Grant.	December 11th, 1872.	Resigned. January 3d, 1882.
Clerk. JAMES H. MCKENNEY.	Maryland; July 12th, 1837.	District of Columbia.		May 10th, 1880.	Residence. No. 1517 Rhode Island Avenue.
Marshal. JOHN G. NICOLAY.	February 26th, 1833.	Illinois.		December 16th, 1872.	No. 212 B Street, S. E.
Reporter. J. C. BANCROFT DAVIS.	Massachusetts, December 29th, 1822.	New York.		November 5th, 1883.	No. 1621 H Street, N. W.

THE COURT OF CLAIMS.

Names of Justices.	Where Born.	Whence Appointed.	By Whom Appointed.	Date of Commission.	Residence in Washington.
Chief Justice.					
CHARLES D. DRAKE.	Ohio.	Missouri.	President Grant.	December 12th, 1870.	No. 1416 Twentieth Street, N. W.
Associate Justices.					
CHARLES C. NOTT.	New York.	New York.	President Lincoln.	February 22d, 1865.	No. 1509 Twentieth Street, N. W.
WILLIAM A. RICHARDSON.	Massachusetts.	Massachusetts.	President Grant.	June 2d, 1874.	Riggs House.
GLENNI W. SCOFIELD.	New York.	Pennsylvania.	President Garfield.	May 20th, 1881.	Riggs House.
LAWRENCE WELDON.	Ohio.	Illinois.	President Arthur.	November 24th, 1883.	Willard's Hotel.
Chief Clerk.					
ARCHIBALD HOPKINS.	Massachusetts.	Massachusetts.		January 1st, 1873.	No. 1836 Massachusetts Av., N. W.
Assistant Clerk.					
JOHN RANDOLPH.	Pennsylvania.	Pennsylvania.		December 2d, 1867.	No. 28 I Street, N. W.

THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Names of Justices.	Where Born.	Whence Appointed.	By Whom Appointed.	Date of Commission.	Residence in Washington.
Chief Justice. DAVID K. CARTTER.	New York.	Ohio.	President Lincoln.	March 11th, 1863.	No. 1505 H Street, N. W.
Associate Justices. ANDREW WYLIE.	District of Columbia.	Pennsylvania.	President Buchanan.	January 20th, 1861.	No. 1205 Fourteenth Street.
ARTHUR MACARTHUR.	Scotland.	Wisconsin.	President Grant.	July 15th, 1870.	No. 1201 N Street, N. W.
ALEXANDER B. HAGNER.	Maryland.	District of Columbia.	President Hayes.	January 21st, 1879.	No. 1818 H Street, N. W.
WALTER S. COX.	District of Columbia.	District of Columbia.	President Hayes.	November 1st, 1879.	No. 1638 I Street, N. W.
CHARLES P. JAMES.	District of Columbia.	Ohio.	President Hayes.	December 10th, 1879.	No. 1824 Massachusetts Av.
United States Attorney. AUGUSTUS S. WORTHINGTON.	Pennsylvania.		President Arthur.	January 23d, 1884.	No. 411 Maple Av., Le Droit Park.
Clerk. RETURN J. MEIGS.	Kentucky.	New York.		March 23d, 1863.	No. 302 New Jersey Av., S. E.
Marshal. CLAYTON McMICHAEL.		Pennsylvania.	President Arthur.	December 20th, 1882.	No. 1015 Connecticut Av., N. W.

XVIII.

TABLES OF STATISTICS

RELATING TO THE

CIRCUIT AND DISTRICT COURTS

OF THE

UNITED STATES.

CONTAINING

The Names, Residences, and Dates of Commissions of the Judges of said Courts, the Districts embraced within the various Circuits, and the Territorial Jurisdiction of each District, according to the Revised Statutes and subsequent Acts of Congress, etc., etc.

THE CIRCUIT COURTS OF THE UNITED STATES.

Names of Judges.	Number of Circuit.	By whom Appointed.	Date of Commission, and whence appointed.	Residence.	Districts embraced in Circuits.
LE BARON B. COLT.	First Judicial Circuit.	President Arthur.	— 1884.	Bristol, R. I.	Districts of Maine, New Hampshire, Massachusetts and Rhode Island.
WILLIAM J. WALLACE.	Second Judicial Circuit.	President Arthur.	April 6th, 1882, New York.	Syracuse, New York.	Southern, Northern, and Eastern Districts of New York, and Districts of Connecticut and Vermont.
WILLIAM McKENNAN.	Third Judicial Circuit.	President Grant.	December 22d, 1869, Pennsylvania.	Washington, Pa.	District of New Jersey, Eastern and Western Districts of Pennsylvania, District of Delaware.
HUGH L. BOND.	Fourth Judicial Circuit.	President Grant.	July 13th, 1870, Maryland.	Baltimore, Md.	District of Maryland, Eastern and Western Districts of Virginia, District of West Virginia, Eastern and Western Districts of North Carolina, Eastern and Western Districts of the District of South Carolina.
DON A. PARDEE.	Fifth Judicial Circuit.	President Garfield.	May 13th, 1881, Louisiana.	New Orleans, La.	Northern and Southern Districts of Georgia, Northern and Southern Districts of Florida, Northern, Middle, and Southern Districts of Alabama, Northern and Southern Districts of Mississippi, Eastern and Western Districts of Louisiana, and Northern, Eastern, and Western Districts of Texas.
JOHN BAXTER.	Sixth Judicial Circuit.	President Hayes.	December 13th, 1877, Tennessee.	Knoxville, Tenn.	Northern and Southern Districts of Ohio, Eastern and Western Districts of Michigan, District of Kentucky, and Eastern, Middle, and Western Districts of Tennessee.

Vacancy.	Seventh Judicial Circuit.			District of Indiana, Northern and Southern Districts of Illinois, and Eastern and Western Districts of Wisconsin.
DAVID J. BREWER.	Eighth Judicial Circuit.	President Arthur.	March 31st, 1884, Kansas.	District of Minnesota, Northern and Southern Districts of Iowa, Eastern and Western Districts of Missouri, District of Kansas, Eastern and Western Districts of Arkansas, and Districts of Nebraska and Colorado.
LORENZO SAWYER.	Ninth Judicial Circuit.	President Grant.	January 10th, 1870, California.	Districts of California, Oregon, and Nevada.

THE DISTRICT COURTS OF THE UNITED STATES

WITHIN THE

FIRST JUDICIAL CIRCUIT.

Names of Judges.	Name of District.	By whom Appointed.	Date of Commission.	Residence.	Territorial Jurisdiction of each District, Compiled from Federal Statutes.
NATHAN WEBB.	Maine.	President Arthur.	January 24th, 1882.	Portland, Me.	Entire State. [Revised Statutes (Second Edition), § 531, p. 89.]
DANIEL CLARK.	New Hampshire.	President Johnson.	July 27th, 1866.	Manchester, N. H.	Entire State. [Revised Statutes (Second Edition), § 531, p. 89.]
THOMAS L. NELSON.	Massachusetts.	President Hayes.	January 10th, 1879.	Worcester, Mass.	Entire State. [Revised Statutes (Second Edition), § 531, p. 89.]
LE BARON B. COLT.	Rhode Island.	President Garfield.	March 21st, 1881.	Bristol, R. I.	Entire State. [Revised Statutes (Second Edition), § 531, p. 89.]

THE DISTRICT COURTS OF THE UNITED STATES

WITHIN THE

SECOND JUDICIAL CIRCUIT.

DISTRICT COURTS—SECOND CIRCUIT.

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Names of Judges.	Name of District.	By whom Appointed.	Date of Commission.	Residence.	Territorial Jurisdiction of each District, Compiled from Federal Statutes.
ADDISON BROWN.	Southern District of New York.	President Garfield.	October 14th, 1881.	New York City.	Includes all the residue of the State not embraced in the Northern and Eastern Districts, with the waters thereof, and the District Court has concurrent jurisdiction with the District Court of the Eastern District of New York, over the waters within the Counties of Kings, Queens, and Suffolk, and over all seizures made, and all matters done in such waters; and all processes or orders issued by said court, or its judges, run to and can be executed in any part of said waters. [Revised Statutes (Second Edition), §§ 541, 542, p. 91.]
CHARLES L. BENEDICT.	Eastern District of New York.	President Lincoln.	March 9th, 1865.	Brooklyn, N. Y.	Counties of Richmond, Kings, Queens, and Suffolk, with the waters thereof, and the District Court has concurrent jurisdiction with the District Court of the Southern District of New York, over the waters within the County of New York, and over all seizures made and all matters done in such waters; and all processes or orders issued by said Court, or its judge, run to and can be executed in any part of said waters. [Revised Statutes (Second Edition), §§ 541, 542, p. 91.]
ALFRED C. COXE.	Northern District of New York.	President Arthur.	May 4th, 1882.	Utica, N. Y.	Counties of Rensselaer, Albany, Schoharie, and Delaware, with all the Counties north and west of them. [Revised Statutes (Second Edition), § 541, p. 91.]

THE DISTRICT COURTS OF THE UNITED STATES

WITHIN THE

SECOND JUDICIAL CIRCUIT—*Continued.*

Names of Judges.	Name of District.	By whom Appointed.	Date of Commission.	Residence.	Territorial Jurisdiction of each District, Compiled from Federal Statutes.
NATHANIEL SHIPMAN.	Connecticut.	President Grant.	December 8th, 1873.	Hartford, Conn.	[Revised Statutes (Second Edition), § 531, p. 83.] Entire State.
HOYT H. WHEELER.	Vermont.	President Hayes.	March 16th, 1877.	Jamaica, Vt.	[Revised Statutes (Second Edition), § 531, p. 83.] Entire State.

THE DISTRICT COURTS OF THE UNITED STATES
WITHIN THE
THIRD JUDICIAL CIRCUIT.

Names of Judges.	Name of District.	By whom Appointed.	Date of Commission.	Residence.	Territorial Jurisdiction of each District, Compiled from Federal Statutes.
JOHN T. NIXON.	New Jersey.	President Grant.	April 28th, 1870.	Trenton, N. J.	Entire State. [Revised Statutes (Second Edition), § 531, p. 89.]
WILLIAM BUTLER.	Eastern District of Pennsylvania.	President Hayes.	February 19th, 1879.	Philadelphia, Pa.	All of the State not included in the Western District of Pennsylvania. [Revised Statutes (Second Edition), § 545, p. 91.]
MARCUS W. ACHISON.	Western District of Pennsylvania.	President Hayes.	January 14th, 1880.	Pittsburgh, Pa.	Counties of Fayette, Greene, Washington, Allegheny, Westmoreland, Somerset, Bedford, Huntingdon, Centre, Mifflin, Clearfield, McKean, Potter, Jefferson, Cambria, Indiana, Armstrong, Butler, Beaver, Mercer, Crawford, Venango, Erie, Warren, Susquehanna, Bradford, Tioga, Union, Northumberland, Columbia, Luzerne, and Lycoming, as they existed April 20th, 1818. [Revised Statutes (Second Edition), § 545, p. 91.]
LEONARD E. WALES.	Delaware.	President Arthur.	March 20th, 1884.	Wilmington, Del.	Entire State. [Revised Statutes (Second Edition), § 531, p. 89.]

THE DISTRICT COURTS OF THE UNITED STATES
WITHIN THE
FOURTH JUDICIAL CIRCUIT.

Names of Judges.	Name of District.	By whom Appointed.	Date of Commission.	Residence.	Territorial Jurisdiction of each District, Compiled from Federal Statutes.
THOMAS J. MORRIS.	Maryland.	President Hayes.	July 1st, 1879.	Baltimore, Md.	Entire State. [Revised Statutes (Second Edition), § 531, p. 89.]
ROBERT W. HUGHES.	Eastern District of Vir- ginia.	President Grant.	January 14th, 1874.	Norfolk, Va.	The residue of the State not embraced within the Western District. [Revised Statutes (Second Edition), § 549, p. 92.]
JOHN PAUL.	Western District of Vir- ginia.	President Arthur.	March 2d, 1883.	Harrison- burg, Va.	Counties of Albemarle, Alleghany, Amherst, Appomattox, Augusta, Bath, Bedford, Bland, Botetourt, Buchanan, Buckingham, Camp- bell, Carroll, Charlotte, Clarke, Craig, Cum- berland, Floyd, Franklin, Frederick, Fuvan- na, Giles, Grayson, Greene, Halifax, Henry, Highland, Lee, Madison, Montgomery, Nei- son, Patrick, Page, Pulaski, Pittsylvania, Rappahannock, Rockbridge, Rockingham, Roanoke, Russell, Scott, Smyth, Shenandoah, Tazewell, Washington, Wise, Wythe, and Warren. [Revised Statutes (Second Edition), § 549, p. 92.]
JOHN J. JACKSON.	West Virginia.	President Lincoln.	August 3d, 1861.	Parkersburg, W. Va.	Entire State. [Revised Statutes (Second Edition), § 531, p. 89.]

AUGUSTUS S. SEYMOUR.	Eastern District of North Carolina.	President Arthur.	February 20th, 1882.	New Berne, N. C.	Includes the residue of the State not embraced in the Western District. [Revised Statutes (Second Edition), § 543, p. 91.]
ROBERT P. DICK.	Western District of North Carolina.	President Grant.	June 7th, 1872.	Greensboro- rough, N. C.	Counties of Mecklenburg, Cabarras, Stanly, Montgomery, Richmond, Davie, Davidson, Randolph, Guilford, Stokes, Rockingham, Forsyth, Union, Anson, Caswell, Person, Alamance, Orange, Chatham, Moore, Clay, Cherokee, Swain, Macon, Jackson, Graham, Haywood, Transylvania, Henderson, Buncombe, Madison, Yancey, Ashe, Mitchell, Watanga, Alleghany, Caldwell, Burke, McDowell, Rutherford, Polk, Cleveland, Gaston, Lincoln, Catawba, Alexander, Wilkes, Surrey, Iredell, Yadkin, and Rowan, and all territory embraced therein which may hereafter be erected into new counties. [Revised Statutes (Second Edition), § 543, p. 91.]
GEORGE S. BRYAN.	South Carolina. Divided into two districts, called the Eastern and Western Districts of the District of South Carolina.	President Johnson.	March 12th, 1866.	Charleston, S. C.	Eastern District. —Includes the residue of the State not embraced within the Western District. [Revised Statutes (Second Edition), § 546, p. 92.] Western District. —Counties of Abbeville, Chester, Edgefield, Fairfield, Greenville, Lancaster, Laurens, Newberry, Spartanburg, Union, York, and Pendleton, as they existed February 21st, 1823. [Revised Statutes (Second Edition), § 546, p. 92.]

THE DISTRICT COURTS OF THE UNITED STATES
WITHIN THE
FIFTH JUDICIAL CIRCUIT.

Names of Judges.	Name of District.	By whom Appointed.	Date of Commission.	Residence.	Territorial Jurisdiction of each District, Compiled from Federal Statutes.
HENRY K. MCCOY.	Northern District of Georgia.	President Arthur.	August 4th, 1882.	Atlanta, Ga.	<p>Counties of Troup, Meriwether, Morgan, Green, Taliaferro, Wilkes, and Lincoln, as they existed August 11th, 1848, with all the counties north of them.</p> <p>By Act of Congress of 29th January, 1880, ch. 17, sec. 1, 21 Stat. at Large, 62, the Counties of Pike, Butts, and Jasper were transferred to the Western Division of the Southern District of Georgia from the Northern District of Georgia. [Revised Statutes (Second Edition), § 585, p. 90.]</p>
Vacancy.	Southern District of Georgia. Divided into two divisions known as the Eastern and Western Division of the Southern District of Georgia.				<p>Western Division of the Southern District.—Baker, Bibb, Baldwin, Butts, Clay, Calhoun, Chattahoochee, Crawford, Dooly, Dodge, Dougherty, Early, Hancock, Harris, Houston, Jones, Jasper, Laurens, Lee, Monroe, Macon, Marion, Muscogee, Miller, Mitchell, Pike, Putaski, Putnam, Quitman, Randolph, Stewart, Sumter, Schley, Terrell, Twigg, Taylor, Telfair, Talbot, Upson, Wilkinson, Webster, Warren, and Wilcox. [See Act of Congress of 29th January, 1880, ch. 17, sec. 2, 21 Stat. at Large, 62.]</p> <p>Eastern Division of the Southern District.—Consists of the remaining Counties in the Southern District of Georgia not embraced within the Western Division thereof. [Act of Congress of 29th January, 1880, ch. 17, sec. 2, 21 Stat. at Large, 62.]</p> <p>By Section 535, Revised Statutes (Second Edition), p. 90, the Southern District of Georgia was made to include the Counties of Harris, Talbot, Upson, Monroe, Jones, Putnam, Hancock, Warren, and Columbia, as they existed August 11th, 1848, with all the counties south of them.</p>

THOMAS SETTLE.	Northern District of Florida.	President Grant.	January 30th, 1877.	Jacksonville, Fla.	Northern District. —All the territory within the Counties not embraced within the Southern District of Florida. [Act of Congress of 3d February, 1879, ch. 43; sec. 1, 20 Stat. at Large, 280.]
JAMES W. LOCKE.	Southern District of Florida.	President Arthur.	February 17th, 1882.	Key West, Fla.	Southern District. —Counties of Hernando, Hillsborough, Polk, Manatee, and Monroe. [Act of Congress of 3d February, 1879, ch. 43, sec. 1, 20 Stat. at Large, 280.]
JOHN BRUCE.	Northern, Middle, and Southern Districts of Alabama. The Northern District is divided into the Southern and Northern Divisions.	President Grant.	February 28th, 1875.	Montgomery, Ala.	Northern District. —Includes the remaining Counties in the State not embraced in the Southern and Middle Districts. [Sec. 532, Revised Statutes (Second Edition), 89; see below for statement of Counties transferred from the Southern and Middle to the Northern District of Alabama.] By Act of Congress of May 2d, 1884, ch. 28, sec. 2, 23 Stat. at Large, the Northern District of Alabama was divided into two divisions as follows, and by sec. 1 of said Act the Counties of Sumter, Greene, Hale, and Pickens were transferred to said Northern from the Southern District of Alabama, and the Counties of Tuscaloosa, Bibb, Shelby, and Talladega were transferred to said Northern from the Middle District of Alabama. Southern Division. —Includes the Counties of Sumter, Greene, Hale, Pickens, Tuscaloosa, Lamar, Fayette, Walker, Jefferson, Blount, Bibb, Shelby, Saint Clair, Etowah, Calhoun, Cleburne, Clay, Talladega, Cherokee, and De Kalb. Northern Division. —Includes the remaining Counties in the said Northern District. Middle District. —Autauga, Barbour, Butler, Chambers, Coffee, Coosa, Covington, Dale, Dallas, Henry, Lowndes, Macon, Montgomery, Perry, Pike, Randolph, Russell, and Tallapoosa. [Revised Statutes (Second Edition), § 532, p. 89, and Act of Congress of May 2d, 1884, ch. 28, sec. 1, 23 Stat. at Large.] Southern District. —Baldwin, Clarke, Conecuh, Marengo, Mobile, Monroe, Washington, and Wilcox. [Revised Statutes (Second Edition), § 532, p. 89, and Act of Congress of May 2d, 1884, ch. 28, sec. 1, 23 Stat. at Large.]

THE DISTRICT COURTS OF THE UNITED STATES

WITHIN THE

FIFTH JUDICIAL CIRCUIT—*Continued.*

Names of Judges.	Name of District.	By whom Appointed.	Date of Commission.	Residence.	Territorial Jurisdiction of each District, Compiled from Federal Statutes.
ROBERT ANDREWS HILL.	Northern and Southern Districts of Mississippi, of which the Northern District is divided into the Eastern and West- ern Divisions.	President Johnson.	May 11th, 1866.	Oxford, Miss.	Eastern Division, Northern District. —Alcorn, Choctaw, Chickasaw, Clay, Ita- wamba, Kemper, Lee, Lowndes, Monroe, Neshoba, Noxubee, Oktibbeha, Pontotoc, Prentiss, Tishomingo, Winston. [Act of Congress of 15th June, 1882, ch. 218, sec. 2, 22 Stat. at Large, 101.]
					Western Division, Northern District. —Atala, Benton, Bolivar, Cahoun, Carroll, Coahoma, De Soto, Grenada, La Fayette, Marshall, Montgomery, Panola, Quitman, Webster, Sunflower, Tallahatchie, Tate, Tippah, Tunica, Union, and Yalabusha. [Act of Congress of 15th June, 1882, ch. 218, sec. 2, 22 Stat. at Large, 101.]
EDWARD C. BILLINGS.	Eastern District of Louisiana.	President Grant.	February 10th, 1876.	New Orleans, La.	Southern District. — The residue of the State not embraced within the Northern Dis- trict. [Act of Congress of 15th June, 1882, ch. 218 sec. 2, 22 Stat. at Large, 101.]
					All the Parishes in the State not included in the Western District of Louisiana. [Act of Congress of March 3d, 1881, ch. 144, sec. 1, 21 Stat. at Large, 507.]

Includes the Parishes of Caddo, Bossier, Webster, Claiborne, Union, Morehouse, West Carroll, East Carroll, Madison, Richland, Ouachita, Lincoln, Bienville, Red River, De Soto, Sabine, Winn, Natchitoches, Jackson, Caldwell, Franklin, Tensas, Concordia, Catahoula, Grant, Vernon, Rapides, Avoyelles, Saint Landry, La Fayette, Saint Martin's, Vermilion, Cameron, Calcasieu.
[Act of Congress of March 3d, 1881, ch. 144, sec. 1, 21 Stat. at Large, 507.]

Includes the Counties of Brazos, Robertson, Leon, Limestone, Freestone, Navarro, Ellis, Kaufman, Dallas, Rockwall, Hunt, Fannin, Lamar, Delta, Collin, Grayson, Cooke, Denton, Tarrant, Johnson, Hill, McLennan, Falls, Bell, Coryell, Hamilton, Bosque, Comanche, Erath, Somerville, Hood, Parker, Palo Pinto, Jack, Wise, Archer, Montague, Clay, Wichita, Wilbarger, Hardeman, Knox, Baylor, Haskell, Throckmorton, Young, Stephens, Shackelford, Jones, Taylor, Callahan, Eastland, Brown, Coleman, Runnels, Greer, Nolan, Fisher, Stonewall, King, Cotton, Childress, Collingsworth, Wheeler, Hemphill, Lipscomb, Ochiltree, Roberts, Gray, Donley, Hall, Motley, Dickens, Kent, Scurry, Mitchell, Howard, Borden, Dawson, Gaines, Martin, Andrews, Gaza, Crosby, Floyd, Briscoe, Armstrong, Carson, Hutchinson, Hansford, Sherman, Moore, Potter, Randall, Terry, Swisher, Hale, Lamb, Lubbock, Linn, Castro, Hockley, Deaf Smith, Oldham, Hartley, Dallam, Palmer, Bayley, Cochran, Yoakum, and also all that portion of the Indian Territory not annexed to the District of Kansas by Act of Congress of January 6th, 1883, ch. 13, 22 Stat. at Large, 400, and not set apart and occupied by the Cherokee, Creek, Choctaw, Chickasaw, and Seminole Indian tribes.
[Act of Congress of 24th February, 1879, ch. 97, sec. 1, 20 Stat. at Large, 318, and Act of Congress above cited.]

ALECK. BOARMAN.

Western District of Louisiana.

President Garfield.

May 18th, 1881.

Shreveport,
La.

A. P. MCCORMICK.

Northern District of Texas.

President Hayes.

April 10th, 1879.

Dallas, Texas.

THE DISTRICT COURTS OF THE UNITED STATES
WITHIN THE
FIFTH JUDICIAL CIRCUIT—*Continued.*

Names of Judges.	Name of District.	By whom Appointed.	Date of Commission.	Residence.	Territorial Jurisdiction of each District, and Compiled from Federal Statutes.
CHAUNCEY SABIN.	Eastern District of Texas.	President Arthur.	April 5th, 1884.	Galveston, Texas.	<p>Includes the Counties of Matagorda, Wharton, Brazoria, Jefferson, Orange, Hardin, Liberty, Newton, Jasper, Tyler, Polk, San Jacinto, Montgomery, Walker, Grimes, Madison, Trinity, Angelina, San Augustine, Sabine, Shelby, Nacogdoches, Cherokee, Houston, Anderson, Henderson, Smith, Rush, Panola, Harrison, Gregg, Upshur, Wood, Van Zandt, Rains, Hopkins, Camp, Titus, Marion, Cass, Bowie, Franklin, Morris, Red River, Jackson, Colorado, Fort Bend, Austin, Harris, Galveston, Chambers, Waller.</p> <p>[Acts of Congress of February 24th, 1879, ch. 97, sec. 2, 26 Stat. at Large, 318, and of June 11th, 1879, ch. 18, Sec. 1, 21 Stat. at Large, 10.]</p>
EZEKIEL B. TURNER.	Western District of Texas.	President Hayes.	December 20th, 1880.	Austin, Texas.	<p>Includes Counties of Calhoun, Victoria, Goliad, Refugio, Bee, San Patricio, Nueces, Cameron, Hidalgo, Starr, Zapata, Duval, Ector, Webb, La Salle, McMullen, Live Oak, De Witt, Lavaca, Maverick, Kinney, Uvalde, Medina, Bexar, Guadalupe, Caldwell, Fayette, Washington, Lee, Burleson, Milam, Williamson, Bastrop, Travis, Hayes, Comal, Kendall, Blanco, Burnette, Llano, Gillespie, Kerr, Bandera, Edwards, Kimball, Mason, Menard, El Paso, Presidio, Tom Green, Crockett, Pecos, Concho, McCulloch, San Saba, Lampasas, Gonzales, Wilson, Karnes, Atascosa, Frio, Dimmit, Zavala, and Aransas.</p> <p>[Acts of Congress of February 24th, 1879, ch. 97, sec. 3, 20 Stat. at Large, 318, and of June 14th, 1880, ch. 213, sec. 2, 21 Stat. at Large, 198.]</p>

THE DISTRICT COURTS OF THE UNITED STATES WITHIN THE SIXTH JUDICIAL CIRCUIT.

DISTRICT COURTS—SIXTH CIRCUIT.

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Names of Judges.	Name of District.	By whom Appointed.	Date of Commission.	Residence.	Territorial Jurisdiction of each District, Compiled from Federal Statutes.
MARTIN WELKER.	Northern District of Ohio. Divided into the Eastern and Western Divisions.	President Grant.	December 8th, 1873.	Wooster, Ohio.	<p>Western Division—Northern District. —Counties of Williams, Defiance, Paulding, Van Wert, Mercer, Auglaize, Allen, Putnam, Henry, Fulton, Lucas, Wood, Hancock, Hardin, Logan, Union, Delaware, Marion, Wyandot, Seneca, Sandusky, Ottawa, Erie, and Huron. [Act of Congress of June 8th, 1878, ch. 169, sec. 2, 20 Stat. at Large, 101.]</p> <p>Eastern Division—Northern District. —Consists of the remaining Counties in said District. [Act of Congress of June 8th, 1878, ch. 169, sec. 2, 20 Stat. at Large, 101.]</p> <p>By Sec. 544 of the Revised Statutes (Second Edition), 91, the Northern District of Ohio is declared to include the residue of the State not included in the Southern District of Ohio.</p>
GEORGE R. SAGE.	Southern District of Ohio. Divided into the Eastern and Western Divisions.	President Arthur.	March 20th, 1883.	Cincinnati, Ohio.	<p>Eastern Division—Southern District. —Includes the Counties of Union, Delaware, Morrow, Knox, Coshocton, Harrison, Jefferson, Madison, Fayette, Franklin, Pickaway, Ross, Pike, Gallia, Jackson, Meigs, Vinton, Athens, Hocking, Fairfield, Licking, Perry, Muskingum, Morgan, Washington, Noble, Monroe, Belmont, and Guernsey, the first seven Counties having been transferred by Act of Congress of February 4th, 1880, ch. 18, sec. 1, from the Northern to the Southern District, and by sec. 3 of said Act, which defined the limits of the Eastern Division of the Southern District, and created the same, having been included in this Division.</p> <p>Western Division—Southern District. —Consists of the remaining Counties in the Southern District of Ohio [see sec. 3 of Act cited last above], which Southern District, by Sec. 544 of the Revised Statutes (Second Edition), 91, included the Counties of Belmont, Guernsey, Muskingum, Licking, Franklin, Madison, Champaign, Shelby, and Mercer, as they existed February 10th, 1855, with all the counties south of them.</p>

THE DISTRICT COURTS OF THE UNITED STATES

WITHIN THE

SIXTH JUDICIAL CIRCUIT—Continued.

Names of Judges.	Name of District.	By whom Appointed.	Date of Commission.	Residence.	Territorial Jurisdiction of each District, Compiled from Federal Statutes.
HENRY B. BROWN.	Eastern District of Michigan.	President Grant.	March 19th, 1875.	Detroit, Mich.	Includes all the territory and waters of the State not included within the boundaries of the Western District of Michigan as described in sec. 538 of the Revised Statutes (Second Edition), 90, except the Counties of Chippewa, Schoolcraft, Marquette, Houghton, Keweenaw, Ontonagon, Isle Royale, Baraga, and Mackinaw, being and including all that portion of the territory and waters of said Eastern District lying in the upper peninsula of Michigan, which were detached from the Eastern and attached to the Western District by Act of Congress of June 19th, 1878, ch. 326, sec. 1, 20 Stat. at Large, 175.
SOLOMON L. WITHEY.	Western District of Michigan. Divided into the Southern and Northern Divisions.	President Lincoln.	March 11, 1863.	Grand Rapids, Mich.	<p>Southern Division—Western District. —Comprises all that portion of said District lying and being in the lower peninsula of the State. [Act of Congress of June 19th, 1878, ch. 326, sec. 2, 20 Stat. at Large, 175.]</p> <p>Northern Division—Western District. —Comprises all the territory and waters of the entire upper peninsula of the State. [Act of Congress of June 19th, 1878, ch. 326, sec. 2, 20 Stat. at Large, 175.]</p> <p>[For the contents of the Western District given by metes and bounds, which is too long for insertion here, see sec. 538, Revised Statutes (Second Edition), 90, and see under the Eastern District for description of territory detached from the Eastern and attached to the Western District of Michigan.]</p>

JOHN W. BARR.	Kentucky.	President Hayes.	April 16th, 1880.	Louisville, Ky.	<p>Entire State. [Revised Statutes (Second Edition), § 531, p. 89.]</p>
DAVID M. KEY.	Eastern and Middle Dis- tricts of Tennessee. The Eastern District is divided into the North- ern and Southern Divi- sions.	President Hayes.	May 27th, 1880.	Chattanooga, Tenn.	<p>Southern Division—Eastern District. —Counties of Hamilton, James, Polk, Mc- Minn, Bradley, Meigs, Rhea, Marion, Se- quatchie, Bledsoe, Grundy and Cumberland. [Act of Congress of June 11th, 1880, ch. 203, sec. 3, 21 Stat. at Large, 751.] By said Act the County of Grundy was trans- ferred from the Middle to the Eastern Dis- trict of Tennessee.</p> <p>Northern Division—Eastern District. —Consists of the remaining Counties in said Eastern District not included in the Southern Division of the District. [Act of Congress of June 11th, 1880, ch. 203, sec. 3, 21 Stat. at Large, 751.] By § 547, Revised Statutes (Second Edition), 92, the Eastern District of Tennessee was made to include the Counties of Anderson, Bledsoe, Blount, Bradley, Campbell, Carter, Claiborne, Cocke, Cumberland, Grainger, Greene, Ham- ilton, Hancock, Hawkins, Jefferson, John- son, Knox, McMinn, Marion, Meigs, Monroe, Morgan, Polk, Rhea, Roane, Scott, Sevier, Sullivan, Union, and Washington, as they existed February 19th, 1856.</p> <p>Middle District.—Includes the residue of the State not embraced within the Eastern and Western Districts. [Revised Statutes (Second Edition), § 547, p. 92.] By Act of Congress of March 3d, 1875, ch. 148, sec. 1, 18 Stat. at Large, 480, Perry County was transferred to the Middle from the West- ern District.</p>

THE DISTRICT COURTS OF THE UNITED STATES

WITHIN THE

SIXTH JUDICIAL CIRCUIT—*Continued.*

Names of Judges.	Name of District.	By whom Appointed.	Date of Commission.	Residence.	Territorial Jurisdiction of each District, Compiled from Federal Statutes.
ELLI S. HAMMOND.	Western District of Tennessee. Divided into the Eastern and Western Divisions.	President Hayes.	June 17th, 1878.	Memphis, Tenn.	<p>Eastern Division of the Western District.—Counties of Benton, Carroll, Decatur, Gibson, Henderson, Henry, Madison, McNairy, Hardin, Dyer, Lake, Crockett, Weakley, and Obion. [Act of Congress of June 20th, 1878, ch. 359, sec. 1, par. 17, 20 Stat. at Large, 206.]</p> <p>By Act of Congress of January 15th, 1883, ch. 25, 22 Stat. at Large, 402, the County of Hardeman was attached to the Eastern Division of the Western District.</p> <p>Western Division of the Western District.—Includes the remaining Counties embraced in the District. [Act of Congress of June 20th, 1878, ch. 359, sec. 1, par. 17, 20 Stat. at Large, 206.]</p> <p>By Revised Statutes (Second Edition), § 547, p. 92, the Western District was made to include the Counties of Benton, Carroll, Henry, Obion, Dyer, Gibson, Lauderdale, Haywood, Tipton, Shelby, Fayette, Hardeman, McNairy, Hardin, Perry, Madison, Henderson, and Weakley, as they existed June 18th, 1838.</p>

THE DISTRICT COURTS OF THE UNITED STATES
WITHIN THE
SEVENTH JUDICIAL CIRCUIT.

Names of Judges.	Name of District.	By whom Appointed.	Date of Commission.	Residence.	Territorial Jurisdiction of each District, compiled from Federal Statutes.
WILLIAM S. WOODS.	Indiana.	President Arthur.	May 2d, 1883.	Indianapolis, Ind.	Entire State. [Revised Statutes (Second Edition), § 531, p. 89.]
HENRY W. BLODGETT.	Northern District of Illinois.	President Grant.	January 11th, 1870.	Waukegan, Ills.	Counties of Henderson, Warren, Knox, Peoria, Woodford, Livingston, and Iroquois, as they existed February 13th, 1855, with all the counties north of them. [Revised Statutes (Second Edition) § 536, p. 90.]
SAMUEL H. TREAT.	Southern District of Illinois.	President Pierce.	March 3d, 1855.	Springfield, Ills.	The residue of the State not included in the Northern District. [Revised Statutes (Second Edition), § 536, p. 90.]
CHARLES E. DYER.	Eastern District of Wisconsin.	President Grant.	February 10th, 1875.	Racine, Wis.	The residue of the State not included in the Western District. [Revised Statutes (Second Edition), § 550, p. 92.]
ROMANZA BUNN.	Western District of Wisconsin.	President Hayes.	October 30th, 1877.	Madison, Wis.	Adams, Ashland, Barron, Bayfield, Buffalo, Burnett, Chippewa, Clark, Columbia, Crawford, Dane, Douglas, Eau Claire, Grant, Green, Iowa, Jackson, Jefferson, Juneau, La Crosse, La Fayette, Marathon, Monroe, Pepin, Pierce, Polk, Portage, Richland, Rock, Saint Croix, Sauk, Trempealeau, Vernon and Wood Counties. [Revised Statutes (Second Edition), § 550, p. 92.]

THE DISTRICT COURTS OF THE UNITED STATES
WITHIN THE
EIGHTH JUDICIAL CIRCUIT.

Names of Judges.	Name of District.	By whom Appointed.	Date of Commission.	Residence.	Territorial Jurisdiction of each District, compiled from Federal Statutes.
RENSELAER R. NELSON.	Minnesota.	President Buchanan.	May 20th, 1858.	St. Paul, Minn.	<p style="text-align: center;">Entire State. [Revised Statutes (Second Edition), § 531, p. 89.]</p> <p>Northern District.—Consists of the Counties of Clinton, Jones, Linn, Benton, Black Hawk, Grundy, Hardin, Hamilton, Webster, Calhoun, Sac, Ida, Monona, and all the counties north of them. [Act of Congress of July 20th, 1882, ch. 312, sec. 1, 22 Stat. at Large, 172.]</p> <p>Eastern Division of the Northern District.—Counties of Dubuque, Clinton, Jackson, Jones, Linn, Benton, Black Hawk, Buchanan, Delaware, Clayton, Fayette, Bremer, Floyd, Chickasaw, Mitchell, Howard, Winnebago, and Allamakee. [Act of Congress of July 20th, 1882, ch. 312, sec. 5, 22 Stat. at Large, 172.]</p> <p>Central Division of the Northern District.—Counties of Grundy, Hardin, Hamilton, Webster, Calhoun, Pocahontas, Palo Alto, Emmett, Kossuth, Humboldt, Wright, Hancock, Winnebago, Worth, Cerro Gordo, Franklin, and Butler. [Act of Congress of July 20th, 1882, ch. 312, sec. 5, 22 Stat. at Large, 172.]</p> <p>Western Division of the Northern District.—Counties of Monona, Woodbury, Plymouth, Sioux, Lyon, Osceola, O'Brien, Cherokee, Ida, Sac, Buena Vista, Clay, and Dickinson. [Act of Congress of July 20th, 1882, ch. 312, sec. 5, 22 Stat. at Large, 172.]</p>
OLIVER P. SHIRAS.	Northern District of Iowa. Divided into the Eastern, Central, and Western Divisions, for the purpose of holding terms of Court.	President Arthur.	August 4th, 1882.	Dubuque, Iowa.	

JAMES M. LOVE.	Southern District of Iowa. Divided into the Eastern, Central and Western Div- isions, for the purpose of holding terms of Court.	President Pierce.	February 21st, 1856.	Keokuk, Iowa.	<p>Eastern Division of the Southern Dis- trict.—Counties of Scott, Cedar, Muscatine, Washington, Louisa, Keokuk, Appanoose, Davis, Wapello, Jefferson, Van Buren, Henry, Des Moines, and Lee. [Act of Congress of July 20th, 1882, ch. 312, sec. 6, 22 Stat. at Large, 172.]</p> <p>Central Division of the Southern Dis- trict.—Counties of Johnson, Iowa, Pow- shiek, Mahaska, Jasper, Tama, Marshall, Story, Boone, Greene, Guthrie, Adair, Dallas, Polk, Madison, Warren, Marion, Clarke, Lucas, Decatur, Monroe, and Wayne. [Act of Congress of July 20th, 1882, ch. 312, sec. 6, 22 Stat. at Large, 172.]</p> <p>Western Division of the Southern Dis- trict.—Counties of Carroll, Crawford, Harri- son, Shelby, Audubon, Cass, Pottawatomie, Mills, Montgomery, Adams, Union, Ring- gold, Taylor, Page, and Fremont. [Act of Congress of July 20th, 1882, ch. 312, sec. 6, 22 Stat. at Large, 172.]</p>
SAMUEL TREAT.	Eastern District of Mis- sour.	President Pierce.	March 3d, 1857.	St. Louis, Mo.	<p>Counties of Adair, Franklin, Gasconade, Knox, Montgomery, Monroe, Oregon, Pike, Rey- nolds, Shannon, Schuyler, Shelby, and Wash- ington, as they existed January 1st, 1857, with all the counties east of them. [Revised Statutes (Second Edition), § 540, p. 91, as amended by Act of Congress of April 8th, 1878, ch. 51, 20 Stat. at Large, 35.]</p>

THE DISTRICT COURTS OF THE UNITED STATES

WITHIN THE

EIGHTH JUDICIAL CIRCUIT—*Continued.*

Names of Judges.	Name of District.	By whom Appointed.	Date of Commission.	Residence.	Territorial Jurisdiction of each District, Compiled from Federal Statutes.
ARNOLD KREKEL.	Western District of Missouri. Divided into the Eastern and Western Divisions.	President Lincoln.	March 9th, 1865.	Jefferson City Mo.	The Western District of Missouri includes the residue of the State not contained within the Eastern District. [Revised Statutes (Second Edition), § 540, p. 91, as amended by Act of Congress of April 8th, 1878, ch. 51, 20 Stat. at Large, 35.] Eastern Division of the Western District. —Contains the remaining Counties embraced in the Western District not contained in the Western Division thereof. [Act of Congress of January 21st, 1879, ch. 20, sec. 1, 20 Stat. at Large, 263.] Western Division of the Western District. —Counties of Andrew, Atchison, Barton, Bates, Buchanan, Caldwell, Carroll, Cass, Chariton, Clay, Chilton, Davies, De Kalb, Gentry, Grundy, Harrison, Holt, Jackson, Jasper, La Fayette, Linn, Livingston, Mercer, Nodaway, Platte, Putnam, Ray, Saline, Sullivan, Vernon, and Worth. [Act of Congress of January 21st, 1879, ch. 20, sec. 1, 20 Stat. at Large, 263.]
CASSIUS G. FOSTER.	Kansas.	President Grant.	March 10th, 1874.	Topeka, Kansas.	Entire State, and all that part of the Indian Territory lying north of the Canadian River, and east of Texas and the one hundredth meridian, not set apart and occupied by the Cherokee, Creek, and Seminole Indian tribes. [Revised Statutes (Second Edition), § 531, p. 89, and Act of Congress of January 6th, 1888, ch. 13, sec. 2, 22 Stat. at Large, 400.]

HENRY C. CALDWELL.	Eastern District of Arkansas.	President Lincoln.	December 14th, 1864.	Little Rock, Ark.	Includes the residue of the State not embraced within the Western District of Arkansas. [Revised Statutes (Second Edition), § 533, p. 89, as amended by Act of Congress of January 31st, 1877, ch. 41, 19 Stat. at Large, 230.]
ISAAC C. PARKER.	Western District of Arkansas.	President Grant.	March 19th, 1875.	Fort Smith, Ark.	Includes the Counties of Benton, Washington, Crawford, Sebastian, Scott, Polk, Sevier, Little River, Howard, Montgomery, Yell, Logan, Franklin, Johnson, Madison, Newton, Carroll, Boone, and Marion, and the country lying west of Missouri and Arkansas, known as the Indian Territory. [Revised Statutes (Second Edition), § 533, p. 89, as amended by Act of Congress of January 31st, 1877, ch. 41, 19 Stat. at Large, 230.] See also for Jurisdiction over the Indian Territory, the Statutes cited under the District of Kansas, and the Northern District of Texas, and sec. 4 of chap. 13 of Act of Congress of January 6th, 1863, 22 Stat. at Large, 400.
ELMER S. DUNDY.	Nebraska.	President Johnson.	April 9th, 1868.	Falls City, Neb.	Entire State. [Revised Statutes (Second Edition), § 531, p. 89.]
MOSES HALLETT.	Colorado.	President Hayes.	June 12th, 1877.	Denver, Col.	Entire State. [Act of Congress of June 26th, 1876, ch. 147, sec. 1, 19 Stat. at Large, 61.]

THE DISTRICT COURTS OF THE UNITED STATES

WITHIN THE

NINTH JUDICIAL CIRCUIT.

Names of Judges.	Name of District.	By whom Appointed.	Date of Commission.	Residence.	Territorial Jurisdiction of each District, Compiled from Federal Statutes.
OGDEN HOFFMAN.	California.	President Fillmore.	February 27th, 1851.	San Francisco, Cal.	Entire State. [Revised Statutes (Second Edition), § 531, p. 89.]
MATTHEW P. DEADY.	Oregon.	President Buchanan.	March 9th, 1859.	Portland, Oregon.	Entire State. [Revised Statutes (Second Edition), § 531, p. 89.]
GEORGE M. SABIN.	Nevada.	President Arthur.	July 26th, 1882.	Carson City, Nev.	Entire State. [Revised Statutes (Second Edition), § 531, p. 89.]

XIX.

TABLES OF STATISTICS

RELATING TO THE

CLERKS AND TERMS OF COURT

OF THE

CIRCUIT AND DISTRICT COURTS

OF THE

UNITED STATES.

Giving the names of the Clerks of the Circuit and District Courts in each District, the Places where the Clerks' Offices are situated, and the Times of Holding all the Circuit and District Courts in the United States, taken from the Revised Statutes and subsequent Acts of Congress, &c., &c.

CLERKS, CLERK'S OFFICES AND TERMS OF THE CIRCUIT AND DISTRICT COURTS OF
THE UNITED STATES.

FIRST JUDICIAL CIRCUIT.

Name of District.	Name of Circuit Court Clerk.	Circuit Court, Clerk's Office at.	Circuit Courts, when and where held. Compiled from Federal Statutes.	Name of District Court Clerk.	District Court, Clerk's Office at.	District Courts, when and where held. Compiled from Federal Statutes.
MAINE.	ABNER H. DAVIS.	Portland.	Twenty third of April and September, at Portland. [Revised Statutes (Second Edition), § 658, p. 121.]	WILLIAM P. PREBLE.	Portland.	First Tuesdays of February and December at Portland; first Tuesday of June at Bangor, and first Tuesday of September at Bath. [Revised Statutes (Second Edition), § 572, p. 99; Act of Congress of Jan. 18th, 1884, ch. 1, § 23 Stat. at Large.]
NEW HAMPSHIRE.	WILLIAM H. HACKETT.	Portsmouth.	May 8th, at Portsmouth, October 8th, at Concord. [Revised Statutes (Second Edition), § 658, p. 121; Act of Congress of February 23d, 1881, ch. 71, § 21 Stat. at Large, 330.]	CHARLES H. BARTLETT.	Manchester.	Third Tuesdays of March and September at Portsmouth; third Tuesdays of June and December at Concord. [Revised Statutes (Second Edition), § 572, p. 100; Act of Congress of February 23d, 1881, ch. 71, § 21 Stat. at Large, 330.]
MASSACHUSETTS.	JOHN G. STETSON.	Boston.	15th of May and 15th of October at Boston. [Revised Statutes, § 658, p. 121.]	CLEMENT HUGH HILL.	Boston.	Third Tuesday of March, fourth Tuesday of June, second Tuesday of September, and first Tuesday of December at Boston. [Revised Statutes (Second Edition), § 572, p. 99.]
RHODE ISLAND.	HENRY PITMAN.	Providence.	15th of June and 15th November, at Providence. [Revised Statutes (Second Edition), § 658, p. 122.]	HENRY PITMAN.	Providence.	First Tuesdays in February and August, at Providence; second Tuesday in May and third Tuesday in October at Newport. [Revised Statutes (Second Edition), § 572, p. 101.]

SECOND JUDICIAL CIRCUIT.

Name of District.	Name of Circuit Court Clerk.	Circuit Court, Clerk's Office at.	Circuit Courts, when and where held. Compiled from Federal Statutes.	Name of District Court Clerk.	District Court, Clerk's Office at.	District Courts, when and where held. Compiled from Federal Statutes.
VERMONT.	BRADLEY B. SMALLEY.	Burlington.	Fourth Tuesday in February at Burlington; third Tuesday in May at Windsor; first Tuesday in October at Rutland. [Revised Statutes (Second Edition), § 658, p. 122; Act of Congress of June 5th, 1874, ch. 214, 18 Stat. at Large, 53.]	BRADLEY B. SMALLEY.	Burlington.	Fourth Tuesday in February, at Burlington; third Tuesday in May at Windsor; first Tuesday in October at Rutland. [Revised Statutes (Second Edition), § 572, p. 101; Act of Congress of June 5th, 1874, ch. 214, 18 Stat. at Large, 53.]
CONNECTICUT.	EDWIN E. MARVIN.	Hartford.	Fourth Tuesday in April at New Haven; third Tuesday in September at Hartford. [Revised Statutes (Second Edition), § 685, p. 120.]	EDWIN E. MARVIN.	Hartford.	Fourth Tuesdays in February and August at New Haven; fourth Tuesday in May and first Tuesday in December, at Hartford. [Revised Statutes (Second Edition), § 572, p. 98; Act of Congress of June 30th, 1879, ch. 49, 21 Stat. at Large, 41.]
NEW YORK. Southern District.	TIMOTHY GRIFFITH.	Post-Office Building, New York City.	First Monday in April and third Monday in October for all cases; the last Monday in February for equity and criminal cases only, and the second Wednesday in January, March, and May, the third Wednesday in June and the second Wednesday in October and December exclusively for criminal cases, all at the City of New York. [Revised Statutes (Second Edition), § 658, p. 122.]	SAMUEL H. LYMAN.	Post-Office Building, New York City.	First Tuesday in every month. [Revised Statutes (Second Edition), § 572, p. 100.]
NEW YORK. Eastern District.	BENJAMIN LINCOLN BENEDICT.	No. 168 Montague Street, Brooklyn.	First Wednesday in every month at No. 168 Montague Street, Brooklyn. [Revised Statutes (Second Edition), § 658, p. 122.]	BENJAMIN LINCOLN BENEDICT.	No. 168 Montague Street, Brooklyn.	First Wednesday in every month at No. 168 Montague Street, Brooklyn. [Revised Statutes (Second Edition), § 572, p. 100.]

SECOND JUDICIAL CIRCUIT.—Continued.

Name of District.	Name of Circuit Court Clerk.	Circuit Court, Clerk's Office at.	Circuit Courts, when and where held. Compiled from Federal Statutes.	Name of District Court Clerk.	District Court, Clerk's Office, at.	District Courts, when and where held. Compiled from Federal Statutes.
NEW YORK. Northern Dis- trict.	WILLIAM S. DOOLITTLE.	Utica.	Third Tuesday in January at Albany; third Tuesday in March at Utica; third Tuesday in June at Canandaigua, and third Tuesday in November at Syracuse. [Revised Statutes (Second Edition), § 658, p. 121, as amended by Act of Congress of March 23d, 1882, ch. 48, 22 Stat. at Large, 32.]	CHARLES B. GERMAIN.	Buffalo.	Third Tuesday in January at Albany; third Tuesday in March at Utica; second Tuesday in May at Rochester; third Tuesday in September at Buffalo, and third Tuesday in November at Auburn, and in the discretion of the Judge one term annually at such time and place as he may appoint with in the Counties of Onondaga, Saint Lawrence, Clinton, Jefferson, Oswego and Franklin. [Revised Statutes (Second Edition), § 572, p. 100, as amended by Act of Congress of March 23d, 1882, ch. 48, 22 Stat. at Large, 32.]

THIRD JUDICIAL CIRCUIT.

Name of District.	Name of Circuit Court Clerk.	Circuit Court, Clerk's Office at.	Circuit Courts, when and where held. Complied from Federal Statutes.	Name of District Court Clerk.	District Court, Clerk's Office at.	District Courts, when and where held. Complied from Federal Statutes.
NEW JERSEY.	S. D. OLIPHANT.	Trenton.	Fourth Tuesdays in March and September at Trenton, [Revised Statutes (Second Edition), § 658, p. 121.]	LINSLEY ROWE.	Trenton.	Third Tuesdays in January, April, June and September, at Trenton. [Revised Statutes (Second Edition), § 572, p. 100.]
PENNSYLVANIA. Eastern District.	SAMUEL BELL.	Philadelphia.	First Mondays of April and October at Philadelphia.	CHARLES S. LINCOLN.	Philadelphia.	Third Mondays in February, May, August, and November, at Philadelphia. [Revised Statutes (Second Edition), § 572, p. 100.]
PENNSYLVANIA. Western District.	H. D. GAMBLE. BENJAMIN S. BENTLEY.	Pittsburgh. Williamsport.	Second Monday of January and third Monday in July, at Erie; second Mondays in May and November, at Pittsburgh; third Mondays in June and September at Williamsport. [Revised Statutes (Second Edition), § 658, p. 122.]	STEPHEN C. McCANDLESS.	Pittsburgh.	Second Monday in January and third Monday in July at Erie; first Monday in May and third Monday in October, at Pittsburgh; third Monday in June and first Monday in October, at Williamsport. [Revised Statutes (Second Edition), § 572, p. 100.]
DELAWARE.	S. RODMOND SMITH.	Wilmington.	Third Tuesday in June and October, at Wilmington. [Revised Statutes (Second Edition), § 658, p. 120.]	S. RODMOND SMITH.	Wilmington.	Second Tuesdays in January, April, June, and September, at Wilmington. [Revised Statutes (Second Edition), § 572, p. 98.]

FOURTH JUDICIAL CIRCUIT.

Name of District.	Name of Circuit Court Clerk.	Circuit Court, Clerk's Office at.	Circuit Courts, when and where held. Compiled from Federal Statutes.	Name of District Court Clerk.	District Court, Clerk's Office at.	District Courts, when and where held. Compiled from Federal Statutes.
MARYLAND.	JAMES W. CHEW.	Baltimore.	First Mondays of April and November at Baltimore. [Revised Statutes (Second Edition), § 658, p. 121.]	JAMES W. CHEW.	Baltimore.	First Tuesdays of March, June, September, and December, at Baltimore. [Revised Statutes (Second Edition), § 572, p. 99.]
VIRGINIA. Eastern District.	MATTHEW F. PLEASANTS.	Richmond.	First Mondays in April and October, at Richmond; first Mondays in January and July at Alexandria; first Mondays in May and November, at Norfolk. [Revised Statutes (Second Edition), § 658, p. 122.]	WILLIAM B. WALL. JOHN S. FOWLER.	Richmond. Alexandria.	Same as Circuit Courts. [Revised Statutes (Second Edition), § 572, p. 101.]
VIRGINIA. Western District.	WYATT M. ELLIOT. I. C. FOWLER. G. W. MORRIS. WILLIAM B. LURTY.	Lynchburgh. Abingdon. Danville. Harrisonburgh.	At Danville on the Tuesday after the third Monday in June, and on Tuesday after the third Monday in November; at Lynchburgh, on the Tuesday after the third Monday in March and September; at Harrisonburgh, on the Tuesday after the first Monday in May and the Tuesday after the second Monday in October; and at Abingdon, on the Tuesday after the fourth Monday in May and October. [Revised Statutes (Second Edition), § 658, p. 123; Act of Congress of February 14th, 1881, ch. 45, 21 Stat. at Large, 324.]	I. C. FOWLER. WYATT M. ELLIOT. G. W. MORRIS. WILLIAM B. LURTY.	Abingdon. Lynchburgh. Danville. Harrisonburgh.	Same as Circuit Courts. [Revised Statutes (Second Edition), § 572, p. 101; Act of Congress of February 14th, 1881, ch. 45, 21 Stat. at Large, 324.]
WEST VIRGINIA.	L. B. DELLICKER.	Parkersburg.	January 10th and June 10th at Parkersburg. [Act of Congress of December 21st, 1878, ch. 9, 20 Stat. at Large, 259.]	JASPER Y. MOORE.	Clarksburg.	March 1st and September 1st, at Wheeling; April 1st and October 1st, at Clarksburg; May 1st, and November 1st, at Charleston. This court has Circuit Court powers. [Revised Statutes (Second Edition), § 571, p. 97; Act of Congress of March 9th, 1878, ch. 27, 20 Stat. at Large, 27.]

NORTH CAROLINA. Eastern District.	NATHANIEL J. RIDDICK.	Raleigh.	First Monday of June and last Monday of November at Raleigh. [Revised Statutes (Second Edition), § 658, p. 123.]	WILLIAM J. GRIFFIN. R. B. LEHMAN. WILLIAM H. SHAW.	Elizabeth City. New Berne. Wilmington.	For Albemarle District, third Mondays in April and October, at Elizabeth City; for Pamlico District, fourth Mondays in April and October, at New Berne, and for Cape Fear or Clarendon District, the first Mondays after the fourth Mondays of April and October, at Wilmington. [Revised Statutes (Second Edition), § 572, p. 100.]
NORTH CAROLINA. Western District.	HENRY C. COWLES. J. E. READ. JOHN W. PAYNE.	Statesville. Asheville. Greensborough.	At Greensborough, first Mondays in April and October; at Statesville, third Mondays in April and October; at Asheville first Mondays in May and November, and at Charlotte, second Mondays in June and December. [Revised Statutes (Second Edition), § 658, p. 123; Act of Congress of June 19th, 1878, ch. 322, § 20 Stat. at Large, 173.]	HENRY C. COWLES. J. E. READ. JOHN W. PAYNE.	Statesville. Asheville. Greensborough.	Same as Circuit Courts. [Revised Statutes (Second Edition), § 572, p. 100; Act of Congress of June 19th, 1878, ch. 322, § 20 Stat. at Large, 173.]
SOUTH CAROLINA.	JAMES E. HAGOOD.	Charleston.	First Monday in April, at Charleston, and fourth Monday in November at Columbia. [Revised Statutes (Second Edition), § 658, p. 123.]	E. M. SEABROOK.	Charleston.	<i>Eastern District of South Carolina.</i> —First Mondays in January, May, July, and October, at Charleston. <i>Western District of South Carolina.</i> —First Monday of August at Greenville. The District Court for the Western District has Circuit Court powers. [Revised Statutes (Second Edition), § 571, p. 97; § 572, p. 101.]

FIFTH JUDICIAL CIRCUIT.

Name of District.	Name of Circuit Court Clerk.	Circuit Court, Clerk's Office at.	Circuit Courts, when and where held, Compiled from Federal Statutes.	Name of District Court Clerk.	District Court, Clerk's Office at.	District Courts, when and where held, Compiled from Federal Statutes.
GEORGIA. Northern Dis- trict.	ALFREDE E. BUCK.	Atlanta.	Second Monday in March and first Monday in October at Atlanta. [Revised Statutes (Second Edition), § 658, p. 120; Act of Congress of June 20th, 1884, ch. 62, 23 Stat. at Large, .]	ALFREDE E. BUCK.	Atlanta.	First Mondays in March and October at Atlanta. [Revised Statutes (Second Edition), § 572, p. 99; Act of Congress of June 20th, 1884, ch. 62, 23 Stat. at Large, .]
GEORGIA. Southern Dis- trict.	H. H. KING.	Savannah.	<i>In the Eastern Division of the South-ern District.</i> —Second Monday in April, and the Thursday after the first Monday in November, at Savannah. [Revised Statutes (Second Edition), § 658, p. 120.] <i>In the Western Division of the South-ern District.</i> —First Mondays in May and October at Macon. [Act of Congress of 29th January, 1880, ch. 17, 21 Stat. at Large, 62.]	MARION ERWIN.	Savannah.	<i>In the Eastern Division of the South-ern District.</i> —Second Tuesdays in February, May, August, and November, at Savannah. [Revised Statutes (Second Edition), § 572, p. 99.] <i>In the Western Division of the South-ern District.</i> —First Mondays in May and October at Macon. [Act of Congress of 29th January, 1880, ch. 17, 21 Stat. at Large, 62.]
FLORIDA. Northern Dis- trict.	PHILIP WALTER. CHARLES H. FOSTER. W. W. WHARTON.	Jacksonville. Tallahassee. Pensacola.	First Monday in February at Tallahassee; first Monday in March at Pensacola; first Monday in December at Jacksonville. [Revised Statutes (Second Edition), § 658, p. 120.]	PHILIP WALTER. CHARLES H. FOSTER. W. W. WHARTON.	Jacksonville. Tallahassee. Pensacola.	Same as Circuit Courts. [Revised Statutes (Second Edition), § 572, p. 99.]
FLORIDA. Southern Dis- trict.	- EUGENE O. LOCKE.	Key West.	First Mondays in May and November at Key West; first Monday in March at Tampa. [Revised Statutes (Second Edition), § 658, p. 120; Act of Congress of February 3d, 1879, ch. 48, 20 Stat. at Large, 280.]	EUGENE O. LOCKE.	Key West.	Same as Circuit Courts. [Revised Statutes (Second Edition), § 572, p. 99; Act of Congress of February 3d, 1879, ch. 48, 20 Stat. at Large, 280.]

ALABAMA. Northern Dis- trict.	A. W. McCUL- LOUGH.	Huntsville.	First Monday in April and second Monday in October at Huntsville. [Act of Congress of June 23d. 1874, ch. 401, sec. 6, 18 Stat. at Large, 195].	A. W. McCUL- LOUGH.	Huntsville.	Same as Circuit Courts. [Act of Congress of June 23d. 1874, ch. 401, sec. 6, 18 Stat. at Large, 195.]
ALABAMA. Middle District.	J. W. DIMMICK.	Montgomery.	First Mondays in May and Novem- ber at Montgomery. [Act of Congress of June 23d. 1874, ch. 401, sec. 6, 18 Stat. at Large, 195.]	J. W. DIMMICK.	Montgomery.	Same as Circuit Courts. [Act of Congress of June 23d. 1874, ch. 401, sec. 6, 18 Stat. at Large, 195.]
ALABAMA. Southern Dis- trict.	N. W. TRIMBLE.	Mobile.	First Monday of June and fourth Monday of December at Mobile. [Act of Congress of June 23d. 1874, ch. 401, sec. 6, 18 Stat. at Large, 195.]	H. S. SKAATS.	Mobile.	Same as Circuit Courts. [Act of Congress of June 23d. 1874, ch. 401, sec. 6, 18 Stat. at Large, 195.]
MISSISSIPPI. Northern Dis- trict.				GEORGE ROBERT HILL.	Oxford.	<i>Eastern Division.</i> —First Mondays in April and October at Aberdeen. [Act of Congress of June 15th. 1882, ch. 218, 22 Stat at Large, 101.] <i>Western Division.</i> —First Mondays in June and December at Oxford. [Act of Congress of June 15th. 1882, ch. 218, 22 Stat. at Large, 101.] The District Court has Circuit Court powers. [Revised Statutes (Second Edition), § 571, p. 97.]
MISSISSIPPI. Southern Dis- trict.	J. M. McKEE.	Jackson.	At Jackson on the first Mondays in May and November. [Revised Statutes (Second Edition), § 658, p. 121.]	A. McGEHEE.	Jackson.	At Jackson on the fourth Mondays in January and June. [Revised Statutes (Second Edition), § 572, p. 100.]
LOUISIANA. Eastern Dis- trict.	E. R. HUNT.	New Orleans.	Fourth Monday in April and first Monday in November at New Orleans. [Revised Statutes (Second Edition), § 658, p. 121; Act of Congress of March 3d. 1881, ch. 144, 21 Stat. at Large, 507.]	JOHN DEVON- SHIRE.	New Orleans.	Third Mondays in February, May, and November, at New Orleans. [Revised Statutes (Second Edition), § 572, p. 99; Act of Congress of March 3d. 1881, ch. 144, 21 Stat. at Large, 507.]

FIFTH JUDICIAL CIRCUIT—Continued.

Name of District.	Name of Circuit Court Clerk.	Circuit Court, Clerk's Office at.	Circuit Courts, when and where held. Complied from Federal Statutes.	Name of District Court Clerk.	District Court, Clerk's Office at.	District Courts, when and where held. Complied from Federal Statutes.
LOUISIANA. Western District.	J. W. WHEATON.	Shreveport.	First Mondays of January and June at Opelousas; fourth Mondays of January and June at Alexandria; third Mondays of February and July at Shreveport; first Mondays of April and October at Monroe. [Act of Congress of March 3d, 1881, ch. 144, 21 Stat. at Large, 507.]	J. W. WHEATON.	Shreveport.	Same as Circuit Courts. [Act of Congress of March 3d, 1881, ch. 144, 21 Stat. at Large, 507.]
	A. J. HOUSTON. J. H. FINKS. F. W. GIRARD.	Dallas. Waco. Graham.	Second Monday of April and third Monday of November at Waco; second Monday of January and third Monday of May at Dallas; second Monday of March and third Monday of October at Graham. [Act of Congress of June 20th, 1884, ch. 58, 23 Stat. at Large, .]	A. J. HOUSTON. J. H. FINKS. F. W. GIRARD.	Dallas. Waco. Graham.	Same as Circuit Courts. [Act of Congress of June 20th, 1884, ch. 58, 23 Stat. at Large, .]
TEXAS. Northern District.	CHRISTOPHER DART. W. M. REED.	Galveston. Tyler.	First Mondays in March and November at Galveston; second Mondays in January and May at Tyler; second Mondays in February and September at Jefferson. [Act of Congress of February 24th, 1879, ch. 97, sec. 4, 20 Stat. at Large, 318; Act of Congress of June 20th, 1884, ch. 58, 23 Stat. at Large, .]	GEORGE C. RIVES. W. A. ALLEN.	Galveston. Tyler.	Same as Circuit Courts. [Act of Congress of June 20th, 1884, ch. 58, 23 Stat. at Large, .]
	WILLIAM E. SINGLETON.	Jefferson.		WILLIAM E. SINGLETON.	Jefferson.	
TEXAS. Eastern District.	SAM. HOPKINS. W. C. ROBARDS. DUVAL BEALL.	Austin. San Antonio. Brownsville.	First Tuesdays in January and June at Austin; fourth Tuesdays in April and November at Brownsville; first Tuesdays in March and October at San Antonio. [Act of Congress of February 28th, 1881, ch. 62, 21 Stat. at Large, 326.]	SAM. HOPKINS. DUVAL BEALL. W. C. ROBARDS.	Austin. San Antonio. Brownsville.	Same as Circuit Courts. [Act of Congress of February 28th, 1881, ch. 62, 21 Stat. at Large, 326.]

SIXTH JUDICIAL CIRCUIT.

Name of District.	Name of Circuit Court Clerk.	Circuit Court, Clerk's Office at.	Circuit Courts, when and where held. Compiled from Federal Statutes.	Name of District Court Clerk.	District Court, Clerk's Office at.	District Courts, when and where held. Compiled from Federal Statutes.
OHIO. Northern Dis- trict.	AUGUSTUS J. RICKS.	Office <i>Eastern Division</i> at Cleveland. Office <i>Western Division</i> at Toledo.	<i>Eastern Division</i> .—First Tuesdays of February, April, and October, at Cleveland. <i>Western Division</i> .—First Tuesdays of June and December at Toledo. [Act of Congress of July 27th, 1882, ch. 351, 22 Stat. at Large, 176.]	EARL BILL.	Cleveland.	Same as Circuit Courts. [Act of Congress of July 27th, 1882, ch. 351, 22 Stat. at Large, 176.]
OHIO. Southern Dis- trict.	W. C. HOWARD.	Cincinnati.	First Tuesdays of February, April, and October, at Cincinnati; first Tuesdays of June and December at Columbus. [Revised Statutes (Second Edition), § 658, p. 122; Act of Congress of February 4th, 1880, ch. 18, 21 Stat. at Large, 63.]	W. C. HOWARD.	Cincinnati.	Same as Circuit Courts. [Revised Statutes (Second Edition), § 572, p. 100; Act of Congress of February 4th, 1880, ch. 18, 21 Stat. at Large, 63.]
MICHIGAN. Eastern Dis- trict.	WALTER S. HARSHA.	Detroit.	First Tuesdays of March, June, and November, at Detroit. [Revised Statutes (Second Edition), § 658, p. 131.]	DARIUS J. DAVISON.	Detroit.	Same as Circuit Courts. [Revised Statutes (Second Edition), § 572, p. 99.] Also one or more terms annually at Port Huron in the discretion of the Judge. [Act of Congress of June 19th, 1878, ch. 326, 20 Stat. at Large, 175.]
MICHIGAN. Western Dis- trict.	HENRY M. HINSDILL.	Grand Rapids.	<i>Southern Division</i> .—First Tuesdays of March and October at Grand Rapids. <i>Northern Division</i> .—First Tuesdays of May and September at Marquette. [Act of Congress of June 19th, 1878, ch. 326, sec. 2, 20 Stat. at Large, 175.]	CHESTER B. HINSDILL.	Grand Rapids.	Same as Circuit Courts. [Act of Congress of June 19th, 1878, ch. 326, sec. 2, 20 Stat. at Large, 175.]

SIXTH JUDICIAL CIRCUIT—Continued.

Name of District.	Name of Circuit Court Clerk.	Circuit Court, Clerk's Office at	Circuit Courts, when and where held. Compiled from Federal Statutes.	Name of District Court Clerk.	District Court, Clerk's Office at	District Courts, when and where held. Compiled from Federal Statutes.
KENTUCKY.	SAMUEL B. CRAWL.	Louisville.	First Monday in October and third Monday in February at Louisville; third Monday in November and first Monday in April at Paducah; first Monday in December and second Monday in May at Covington; first Monday in January and second Monday in June at Frankfort. [Act of Congress of July 1st, 1879, ch. 59, 21 Stat. at Large, 45.]	SAMUEL B. CRAWL.	Louisville.	Same as Circuit Courts. [Act of Congress of July 1st, 1879, ch. 59, 21 Stat. at Large, 45.]
TENNESSEE. Eastern District.	A. R. HUMES.	Knoxville.	Second Mondays of January and July at Knoxville; first Mondays of April and October at Chattanooga. [Revised Statutes (Second Edition), § 658, p. 122; Act of Congress of June 11th, 1880, ch. 203, sec. 2, 21 Stat. at Large, 751.]	H. L. McCLUNG.	Knoxville.	Same as Circuit Courts. [Revised Statutes (Second Edition), § 572, p. 100; Act of Congress of June 11th, 1880, ch. 203, sec. 2, 21 Stat. at Large, 751.]
TENNESSEE. Middle District.	LEWIS T. BAXTER.	Nashville.	Third Mondays of April and October at Nashville. [Revised Statutes (Second Edition), § 658, p. 122.]	EDWARD R. CAMPBELL.	Nashville.	Same as Circuit Courts. [Revised Statutes (Second Edition), § 572, p. 101.]

TENNESSEE. Western Dis- trict.	BELL W. ETHER- IDGE.	Memphis.	<p><i>Western Division.</i>—Fourth Monday of May and fourth Monday of November at Memphis. [Revised Statutes (Second Edition). § 658, p. 122; Act of Congress of June 20th, 1878, ch. 359 sec. 1, par. 17, 20 Stat. at Large, 206.]</p> <p><i>Eastern Division.</i>—Fourth Monday of April and fourth Monday of October at Jackson. [Act of Congress of June 20th, 1878, ch. 359, sec. 1, par. 17, 20 Stat. at Large, 206.]</p>	HORACE E. ANDREWS.	Memphis.	Same as Circuit Courts for each Division. [Revised Statutes (Second Edition) § 572, p. 101; Act of Congress of June 20th, 1878, ch. 359, sec. 1, par. 17, 20 Stat. at Large, 206.]
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SEVENTH JUDICIAL CIRCUIT.

Name of District.	Name of Circuit Court Clerk.	Circuit Court, Clerk's Office at.	Circuit Courts, when and where held. Compiled from Federal Statutes.	Name of District Court Clerk.	District Court, Clerk's Office at.	District Courts, when and where held. Compiled from Federal Statutes.
INDIANA.	NOBLE C. BUTLER.	Indianapolis. Deputy Clerk at New Albany. Deputy Clerk at Evansville.	First Mondays of January and July at New Albany; first Mondays of April and October, at Evansville; first Tuesdays of May and November, at Indianapolis; second Tuesdays of June and December at Fort Wayne. [Revised Statutes (Second Edition), § 658, p. 120; Act of Congress of June 23d, 1874, ch. 463, 18 Stat. at Large, 251; Act of Congress of March 3d, 1881, ch. 154, 21 Stat. at Large, 511.]	NOBLE C. BUTLER.	Indianapolis. Deputy Clerk at New Albany. Deputy Clerk at Evansville.	Same as Circuit Courts. [Revised Statutes (Second Edition), § 572, p. 99; Act of Congress of June 23d, 1874, ch. 463, 18 Stat. at Large, 251; Act of Congress of March 3d, 1881, ch. 154, 21 Stat. at Large, 511.]
ILLINOIS. Northern District.	WILLIAM H. BRADLEY.	Chicago.	First Monday in July, and third Monday in December at Chicago. [Revised Statutes (Second Edition), § 658, p. 120.] Adjourned Terms are also held at Chicago on the first Mondays in March, May, and October, the time being fixed by the Court.	WILLIAM H. BRADLEY.	Chicago.	Same as Circuit Courts. [Revised Statutes (Second Edition), § 572, p. 99.]
ILLINOIS. Southern District.	JOHN ALBERT JONES.	Springfield.	First Mondays in January and June at Springfield. [Revised Statutes (Second Edition), § 658, p. 120.]	M. B. CONVERSE.	Springfield.	First Monday in January and June, at Springfield; first Monday in March and October at Cairo. [Revised Statutes (Second Edition), § 572, p. 99.]

WISCONSIN. Eastern Dis- trict.	EDWARD KURTZ. Milwaukee.	First Mondays in January and Octo- ber, at Milwaukee; second Tues- day in July, at Oshkosh. [Revised Statutes (Second Edition), § 658, p. 123; Act of Congress of June 16th, 1874, ch. 286, 18 Stat. at Large, 75.]	EDWARD KURTZ	Milwaukee.	Same as Circuit Courts. [Revised Statutes (Second Edition), § 572, p. 101; Act of Congress of June 16th, 1874, ch. 286, 18 Stat. at Large, 75.]
WISCONSIN. Western Dis- trict.	FRANK M. STEW- ART. Madison.	First Monday in June, at Madison; third Tuesday in September at La Crosse. Special Term, first Tues- day in December at Madison. [Revised Statutes (Second Edition), §§ 658, 668, pp. 123, 124.]	HARVEY J. PECK.	La Crosse.	First Monday in June at Madison; third Tuesday in September at La Crosse; open at all times to hear admiralty causes without a jury. [Revised Statutes (Second Edition), §§ 572, 576, pp. 101, 102].

EIGHTH JUDICIAL CIRCUIT.

Name of District.	Name of Circuit Court Clerk.	Circuit Court, when and where held. Compiled from Federal Statutes.	Name of District Court Clerk.	District Court, Clerk's Office at.	District Courts, when and where held. Compiled from Federal Statutes.
MINNESOTA.	HORATIO E. MANN.	Third Monday in June and second Monday in December at Saint Paul. [Revised Statutes (Second Edition), § 658, p. 121.]	WILLIAM A. SPENCER.	Saint Paul.	First Monday in June at Winona; first Monday in October at Saint Paul. [Revised Statutes (Second Edition), § 572, p. 100.]
IOWA. Northern District.	ALONZO J. VAN DUZEE.	First Tuesday in April and third Tuesday in November at Dubuque; third Tuesdays in January and June at Fort Dodge; second Tuesday in May and first Tuesday in October at Sioux City. [Act of Congress of February 23d, 1884, ch. 4, 23 Stat. at Large.]	ALONZO J. VAN DUZEE.	Dubuque.	Same as Circuit Courts. [Act of Congress of February 23d, 1884, ch. 7, 23 Stat. at Large.]
IOWA. Southern District.	EDWARD R. MASON.	<i>Eastern Division.</i> —Third Tuesdays in January and June at Keokuk. <i>Western Division.</i> —Fourth Mondays of March and September at Council Bluffs. <i>Central Division.</i> —Second Tuesday in May and third Tuesday in October at Des Moines. [Revised Statutes (Second Edition), § 572, p. 99; Act of Congress of February 9th, 1874, 18 Stat. at Large, 15; Act of Congress of June 4th, 1880, 21 Stat. at Large, 155.]	HENRY K. LOVE.	Des Moines.	Same as Circuit Courts. [Revised Statutes (Second Edition), § 572, p. 99; Act of Congress of February 9th, 1874, 18 Stat. at Large, 15.]
MISSOURI. Eastern District.	ARTHUR P. SELBY.	Third Mondays in March and September at Saint Louis. [Revised Statutes (Second Edition), § 658, p. 121.]	JOSEPH H. CLARK.	Saint Louis.	First Mondays of May and November at Saint Louis. [Revised Statutes (Second Edition), § 572, p. 106.]

MISSOURI. Western Dis- trict.	HENRY C. GEISBERG, Clerk.	Clerk and Deputy Clerk at Jefferson City.	Third Mondays of April and No- vember at Jefferson City; third Mondays in May and October at Kansas City. [Revised Statutes (Second Edition), § 658, p. 120; Act of Congress of January 21st, 1879, ch. 20, 20 Stat. at Large, 263.]	LEWIS SCHMIDT.	Jefferson City.	First Mondays of March and Sep- tember at Jefferson City; first Mondays of May and October at Kansas City. [Revised Statutes (Second Edition), § 572, p. 100; Act of Congress of January 21st, 1879, ch. 20, 20 Stat. at Large, 263.]
KANSAS.	ADOLPH S. THOMAS.	Topeka.	Second Monday in January at Fort Scott; first Monday in June at Leavenworth; fourth Monday in November at Topeka. [Revised Statutes (Second Edition), § 658, p. 121; Act of Congress of March 3d, 1879, ch. 177, 20 Stat. at Large, 355.]	JOSEPH C. WILSON.	Topeka.	Second Monday in January at Fort Scott; second Monday in April at Topeka; second Monday of October at Leavenworth; at Wi- chita in each year on the first Monday of September. [Revised Statutes (Second Edition), § 572, p. 99; Act of Congress of March 3d, 1879, ch. 177, 20 Stat. at Large, 355; Act of Congress of January 6th, 1883, ch. 13, 22 Stat. at Large, 400.]
ARKANSAS. Eastern Dis- trict.	RALPH L. GOOD- RICH.	Little Rock.	Second Monday in April and fourth Monday in October at Little Rock. [Revised Statutes (Second Edition), § 658, p. 120.]	RALPH L. GOOD- RICH.	Little Rock. Helena.	First Mondays in April and October at Little Rock; second Mondays in March and October at Helena. [Revised Statutes (Second Edition), § 572, p. 98, as amended by Act of Congress of January 31st, 1877, ch. 41, 19 Stat. at Large, 230.]
ARKANSAS. Western Dis- trict.	STEPHEN WHEELER.	Fort Smith.		STEPHEN WHEELER.	Fort Smith.	The District Court has Circuit Court powers. Terms: First Mondays in February, May, August, and November, at Fort Smith. [Revised Statutes (Second Edition), § 571, p. 97; Act of Congress of January 31st, 1877, 19 Stat. at Large, 230, amending sec. 572 of Revised Statutes (Second Edi- tion), p. 98.]

EIGHTH JUDICIAL CIRCUIT—Continued.

Name of District.	Name of Circuit Court Clerk.	Circuit Court, Clerk's Office at.	Circuit Courts, when and where held. Compiled from Federal Statutes.	Name of District Court Clerk.	District Court, Clerk's Office at.	District Courts, when and where held. Compiled from Federal Statutes.
NEBRASKA.	ELMER D. FRANK.	Omaha.	First Monday in January at Lincoln; first Monday in May at Omaha; second Monday in November at Omaha. [Revised Statutes (Second Edition), § 658, p. 121; Act of Congress of June 19th, 1878, ch. 316, 20 Stat. at Large, 169.]	ELMER S. DUNDY, Jr.	Omaha.	First Monday in January at Lincoln; first Monday in May and October at Omaha. [Revised Statutes (Second Edition), § 572, p. 100; Act of Congress of February 17th, 1877, ch. 60, 19 Stat. at Large, 232; Act of Congress of June 19th, 1878, ch. 316, 20 Stat. at Large, 169.]
COLORADO.	EDWARD F. BISHOP.	Denver.	First Tuesday in March at Pueblo; first Tuesday in May at Denver; first Tuesday in September at Del Norte; first Tuesday in October at Denver. [Act of Congress of April 20th, 1880, 21 Stat. at Large, 76.]	EDWARD F. BISHOP.	Denver.	Same as Circuit Courts. [Act of Congress of April 20th, 1880, 21 Stat. at Large, 76.]

NINTH JUDICIAL CIRCUIT.

Name of District.	Name of Circuit Court Clerk.	Circuit Court, Clerk's Office at.	Circuit Courts, when and where held. Compiled from Federal Statutes.	Name of District Court Clerk.	District Court, Clerk's Office at.	District Courts, when and where held. Compiled from Federal Statutes.
CALIFORNIA.	L. S. B. SAWYER.	San Francisco.	First Monday in February, second Monday in July, and fourth Mon- day in November, at San Fran- cisco. [Revised Statutes (Second Edition), § 658, p. 130; Act of Congress of February 18th, 1876, 19 Stat. at Large, 4.]	SOUTHARD HOFFMAN.	San Francisco.	First Monday in April, second Monday in August, and first Mon- day in December, at San Fran- cisco. [Revised Statutes (Second Edition), § 572, p. 98.]
OREGON.	ROSWELL H. LAMSON.	Portland.	Second Mondays of April and Octo- ber, at Portland. [Revised Statutes (Second Edition), § 658, p. 122; Act of Congress of February 18th, 1876, 19 Stat. at Large, 47.]	ROSWELL H. LAMSON.	Portland.	First Monday of March, July, and November, at Portland. [Revised Statutes (Second Edition), § 572, p. 130.]
NEVADA.	T. J. EDWARDS.	Carson City.	Third Monday in March, and first Monday in November at Carson City. [Revised Statutes (Second Edition), § 658, p. 121; Act of Congress of February 18th, 1876, 19 Stat. at Large, 4.]	T. J. EDWARDS.	Carson City.	First Monday in February, first Monday in May, and first Monday in October, at Carson City. [Revised Statutes (Second Edition), § 572, p. 100.]

XX.

TABLES OF STATISTICS

RELATING TO THE

COURTS, CLERKS, AND TERMS OF COURT

IN THE

TERRITORIES.

Giving the Names of the Judges and Clerks of said Courts, the Location of the Clerks' Offices, the Territorial Jurisdiction of each District in each Territory, and the Terms of Court, compiled from the Register of the Department of Justice.

JUDGES OF THE TERRITORIAL COURTS OF THE UNITED STATES.

Name of Territory.	Name and Office of Judges.	By whom Appointed.	Date of Commission, and whence Appointed.	Residence.	Territorial Jurisdiction of each District, Compiled from the Register of the Department of Justice.
ARIZONA.	SUMNER HOWARD, Chief Justice, Supreme Court.	President Arthur.	March 26th, 1884, Michigan.		First District. —Counties of Prince, Pinal, and Graham.
	D. H. PINNEY, Associate Justice, Supreme Court.	President Arthur.	June 19th, 1883, Arizona.	Phoenix, Arizona.	Second District. —Counties of Maricopa, Yuma, Gild, and Cochise.
	W. F. FITZGERALD, Associate Justice, Supreme Court.	President Arthur.	March 11th, 1884, Mississippi.		Third District. —Counties of Yavapai, Apache, and Mohave.
	ALONZO J. EDGERTON, Chief Justice, Supreme Court.	President Arthur.	December 21st, 1881, Pennsylvania.	Yankton, Dak.	First Judicial District. —Counties of Stone, Greeley, Grant, Clark, Hamlin, Duell, Brookings, Wood Lake, Moody, Minnehaha, Lincoln, Clay, and Union.
DAKOTA.	SANFORD A. HUDSON, Associate Justice, Supreme Court.	President Garfield.	May 4th, 1881, Wisconsin.	Fargo, Dak.	Second Judicial District. —Counties of Campbell, McPherson, Beadle, Mills, Edwards, Walworth, Rusk, Ashmore, Faulk, Thompson, Spink, Hand, Sully, Stanley, Hughes, Hyde, Burchard, Kingsbury, Miner, Wetmore, Buffalo, Charles, Mix, Cragin, Davidson, Hanson, McCook, Turner, Armstrong, Hutchinson, Douglas, Bon Homme, Yankton, Cheyenne, DeLano, Mandan, Lawrence, Pennington, White River, Pratt, Fresho, Lyman, Gregory, Tripp, Meyers, Lugenebeel, Shannon, Custer, and Forsythe.
	WILLIAM E. CHURCH, Associate Justice, Supreme Court.	President Arthur.	February 28th, 1883, Dakota.	Deadwood, Dak.	Third Judicial District. —Counties of Wallette, Monnraile, Pennville, Bottineau, Rolette, Cavileer, Pembina, Grand Forks, Ramsey, Foster, Gingsras, De Smet, McHenry, Sheridan, Stevens, Howard, Williams, Mercer, Morton, Burleigh, Kidder, Sutsman, Barnes, Cass, Richland, Ransom, La Moure, Logan, and Boreman.
	CORNELIUS S. PALMER, Associate Justice, Supreme Court.	President Arthur.	February 28th, 1884.	Yankton, Dak.	

IDAHO.

JOHN T. MORGAN, Chief Justice, Supreme Court.	President Hayes.	June 10th, 1879, Illinois.	Oxford, Idaho.	
NORMAN BUCK, Associate Justice, Supreme Court.	President Arthur.	March 11th, 1884, Idaho.	Lewiston, Idaho.	
CASE BRODERICK, Associate Justice, Supreme Court.	President Arthur.	March 24th, 1884, Kansas.	Boisé City, Idaho.	
DECTUS S. WADE, Chief Justice, Supreme Court.	President Hayes.	February 27th, 1879, Montana.	Helena, Montana.	First District. —Counties of Madison, Gallatin, and Big Horn, which last County is attached to Gallatin for judicial purposes.
WILLIAM J. GALBRAITH, Associate Justice, Supreme Court.	President Arthur.	January 7th, 1884, Iowa.	Virginia City, Montana.	Second District. —Counties of Deer Lodge, Beaver Head, and Missoula.
JOHN COBURN, Associate Justice, Supreme Court.	President Arthur.	February 19th, 1884, Indiana.		Third District. —Counties of Lewis and Clarke, Meagher, Choteau, and Dawson. The last two Counties are attached to Lewis and Clarke for judicial purposes.
SAMUEL B. AXTEL, Chief Justice, Supreme Court.	President Arthur.	July 13th, 1882, New York.	Santa Fé, N. M.	First Judicial District. —Counties of Colfax, Taos, Mora, San Miguel, Santa Fé, and Rio Arriba.
JOSEPH BELL, Associate Justice, Supreme Court.	President Arthur.	January 11th, 1882, New York.	Albuquerque, N. M.	Second Judicial District. —Counties of Bernalillo, Valencia, and Socorro.
WARREN BRISTOL, Associate Justice, Supreme Court.	President Hayes.	December 14th, 1880, Minnesota.	Deming, N. M.	Third Judicial District. —Counties of Doña Ana, Lincoln, and Grant.

MONTANA

NEW MEXICO.

JUDGES OF THE TERRITORIAL COURTS OF THE UNITED STATES—Continued.

Name of Territory.	Name and Office of Judges.	By whom Appointed.	Date of Commission, and when Appointed.	Residence.	Territorial Jurisdiction of each District, Compiled from the Register of the Department of Justice.
UTAH.	CHARLES S. ZANE, Chief Justice, Supreme Court.	President Arthur.	July , 1884, Illinois.	Salt Lake City, Utah.	First District. —Counties of Utah, Juab, Millard, Sevier, San Pete, Wasatch, Emery, Uintah, Weber, Rich, Box, Elder, Cache, and Morgan.
	PHILIP H. EMERSON, Associate Justice, Supreme Court.	President Garfield.	March 10th, 1881, Michigan.	Provo City, Utah.	Second District. —Counties of Beaver, Iron, Washington, Kane, and Pi Ute.
	STEPHEN P. TWISS, Associate Justice, Supreme Court.	President Arthur.	December 14th, 1881, Missouri.	Beaver City, Utah.	Third District. —Counties of Salt Lake, Tooele, Davis, and Summit.
WASHINGTON.	ROGER S. GREEN, Chief Justice, Supreme Court.	President Arthur.	January 29th, 1883, Illinois.	Olympia, W. T.	First District. —Counties of Walla Walla, Columbia, Garfield, Whitman, Spokane, and Stevens.
	JOHN P. HOYT, Associate Justice, Supreme Court, and Judge, District Court.	President Arthur.	January 29th, 1883, Michigan.	Olympia, W. T.	Second District. —Counties of Thurston, Lewis, Mason, Chelan, Pacific, Wahkiakum, Cowlitz, Clarke, Klilkat, Skamania, and Yakima.
	SAMUEL C. WINGARD, Associate Justice, and Judge, District Court.	President Arthur.	February 27th, 1883, Washington.	Walla Walla, W. T.	Third District. —Counties of King, Kittasap, Jefferson, Island, San Juan, Chlallam, and Pierce.
WYOMING.	JOHN W. LACEY, Chief Justice, Supreme Court.	President Arthur.	July , 1884, Indiana.		First District. —County of Laramie.
	JACOB B. BLAIR, Associate Justice, Supreme Court.	President Arthur.	March 24th, 1884, West Virginia.	Laramie City, Wy.	Second District. —Counties of Albany and Johnsou.
	SAMUEL C. PARKS, Associate Justice, Supreme Court.	President Arthur.	January 11th, 1882, New Mexico.	Cheyenne, Wy.	Third District. —Counties of Carbon, Sweetwater, and Uintah.

CLERKS, CLERK'S OFFICES, AND TERMS OF COURT IN THE TERRITORIES.

Name of Territory.	Clerk, Supreme Court.	Clerk's Office at	Clerks, District Court.	Clerk's Office at	Times and Places of Holding Court, Compiled from the Register of the Department of Justice.
ARIZONA.	WILLIAM WILKERSON.				Supreme Court. —First Monday in January at Prescott.
			LORING S. WILLIAMS, First District Court.	Tucson.	First District Court. —Second Mondays in March and November at Tucson.
		Prescott.	F. A. SHAW, Second District Court.	Phoenix.	Second District Court. —First Monday in April, and second Monday in October at Phoenix.
			WILLIAM WILKERSON, Third District Court.	Prescott.	Third District Court. —First Mondays in June and November at Prescott.
DAKOTA.	BENJAMIN S. WILLIAMS.				Supreme Court. —Second Tuesday in May and first Tuesday in October at Yankton.
			F. J. WASHABAUGH, First District Court.	Deadwood.	First District Court. —Third Tuesday in January and first Tuesday in August, at Deadwood.
		Yankton.	S. A. BOYLE, Second District Court.	Yankton.	Second District Court. —First Tuesday in April and second Tuesday in November, at Yankton.
			G. I. FOSTER, Third District Court.	Fargo.	Third District Court. —Fourth Tuesdays in June and December, at Fargo.

CLERKS, CLERK'S OFFICES, AND TERMS OF COURT IN THE TERRITORIES—Continued.

Name of Territory.	Clerk, Supreme Court.	Clerk's Office at	Clerks, District Court.	Clerk's Office at	Terms and Places of Holding Court, Compiled from the Register of the Department of Justice.
IDAHO.	ALONZO L. RICHARDSON.	Boisé City.	H. SQUIER, First District Court.	Lewiston.	Supreme Court. —Fourth Monday in December, 1888, and second Monday of each year thereafter. First District Court. —First Monday in May and third Monday in September at Washington; second Monday in October and first Monday of July at Idaho; last Monday in October and first Monday in April at Shoshone; third Monday in November and third Monday in April at Kootenai; third Monday in December and second Monday in June, at Nez Percé. Second District Court. —Third Monday in November and second Monday in April at Ada; first Monday in October and second Monday in June, at Alturas; third Monday in March and first Monday in September at Boisé City; third Monday in September and second Monday in May, at Owyhee. Third District Court. —Third Monday in October and second Monday in May, at Oneida; third Monday in September and second Monday in June, at Custer; third Monday in April and first Monday in October, at Lenni; second Monday in July and third Monday in November, at Bear Lake; third Monday in July at Cassia.
			ALONZO L. RICHARDSON, Second District Court.	Boisé City.	Supreme Court. —First Monday of January and second Monday of August, at Helena. First District Court. —Third Monday in March and third Monday in September, at Virginia City.
			W. B. THEWS, Third District Court.	Malad City.	Second District Court. —Second Monday in April, first Monday in September, and first Monday in December, at Bozeman. Third District Court. —First Monday in March and first Monday in November at Helena.
MONTANA.	ISAAC R. ALDEN.	Helena.	THEOPHILUS MUFFLY, First District Court. GEORGE W. IRVINE, Second District Court. ALEXANDER H. BEATTIE, Third District Court.	Deer Lodge City. Helena.	

NEW MEXICO.	C. M. PHILLIPS.	Santa Fé.	C. M. PHILLIPS, First Judicial District Court.	Santa Fé.	Supreme Court.—At Santa Fé, first Monday of January. First District Court.—At Santa Fé, first Monday of February and second Monday of July.
			EDMUND H. SMITH, Second Judicial District Court.	Albuquerque.	Second District Court.—At Albuquerque, first Mondays in May and October; at Las Cruces, fourth Monday in March and last Monday in August.
			GEORGE R. BOWMAN, Third Judicial District Court.	La Mesilla.	Supreme Court.—At Salt Lake City, first Monday in February, second Monday in April, fourth Thursday in September, and third Monday in December.
UTAH.	E. T. SPRAGUE.	Salt Lake City.	A. C. EMERSON, First District Court.	Ogden City.	First District Court.—At Provo City, third Monday in February and September; at Ogden City, third Monday in November and first Monday in May.
			JAMES R. WILKINS, Second District Court.	Beaver City.	Second District Court.—At Beaver City, first Mondays in March, May, September, and December.
			J. AVERILL, Third District Court.	Salt Lake City.	Third District Court.—At Salt Lake City, first Monday in February, second Monday in April, fourth Thursday in September, and third Monday in December.
WASHINGTON.	R. G. O'BRIEN.	Olympia.	A. REEVES AYRES, C. D. PORTER, First District Court.	Walla Walla. Colfax.	Supreme Court.—At Olympia, second Monday in July. First District Court.—At Walla Walla, first Monday in May and second Monday in November; at Colfax, second Monday in December and first Monday in June; at Cheney, second Monday in April and first Monday in October.
			R. G. O'BRIEN, S. T. MUNSON, J. L. LYSONS, Second District Court.	Olympia. Yakima. Kalama.	Second District Court.—At Olympia, second Mondays in June and December; at Kalama, fourth Mondays in April and November; at Yakima City, first Tuesday after the fourth Monday in May, and first Tuesday after the second Monday in October.
			JAMES SEAVEY, J. P. LUDLOW, J. H. WILLET, Third District Court.	Port Townsend. Seattle. New Tacoma.	Third District Court.—At Seattle, second Mondays in April and October; at Port Townsend, first Mondays in March and September; at New Tacoma, third Mondays in May and November.

CLERKS, CLERKS' OFFICES, AND TERMS OF COURT IN THE TERRITORIES—*Continued.*

Name of Territory.	Clerk, Supreme Court.	Clerk's Office at	Clerks District Court.	Clerk's Office at	Times and Places of Holding Court, Compiled from the Register of the Department of Justice.
WYOMING.	JOHN W. BRUNER.	Cheyenne.	JOHN K. JEFFREY, First District Court. JOHN W. MELDRUM, Second District Court. JESSE KNIGHT, Third District Court.	Cheyenne. Laramie City. Evanston.	Supreme Court. —First Monday in January, at Cheyenne.
					First District Court. —Third Mondays in April and November, at Cheyenne.
					Second District Court. —Third Mondays in March and October at Laramie City; second Monday in July at Buffalo.
					Third District Court. —First Mondays in March and October, at Rawlins; third Mondays in February and September, at Green River; first Mondays in February and September, at Evanston.

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GENERAL RULES
OF THE
SUPREME COURT OF THE UNITED STATES.

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FOR THE

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ADOPTED BY THE

SUPREME COURT OF THE UNITED STATES.

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